STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Daniel John MacDonald, Sr.
Special Referee Horry County

Appellate Case No. 2023-001920

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SC Court of Appeals

RHH Land Investors, LLC, Respondent,

v.

Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Defendants,

Of whom Leonard R. Watts is the Appellant.

RECORD ON APPEAL

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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 materials.

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Of whom Leonard R. Watts is the Appellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on the Attorney for the Respondents by email to jonathan@angellmolony.com and by depositing a copy of same in the United States Mail, postage prepaid, on Monday, June 24, 2024 addressed to the Attorney of Record:

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF HORRY
RHH LAND INVESTORS, LLC,
Petitioner,
vs. CASE NO. 2016-CP-26-06056
LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC AND SAGO PLANTATION II DEVELOPMENT, INC.,
Respondents.

VIDEOCONFERENCE HEARING BEFORE: DANIEL JAMES MACDONALD, IV

DATE: September 18, 2023

TIME: 2:00 p.m.

LOCATION: 366 N. Church Street
Suite 3000
Spartanburg, SC 29303

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: KAREN NELLIUS, RPR
(Appearing via videoconference.)

APPEARANCES OF COUNSEL:

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(INDEX AT REAR OF TRANSCRIPT)

MR. MACDONALD: This is a hearing in case 2016-CP-26-06056, RHH Land Investors, LLC, versus Leonard R. Watts, and others. This matter was referred to me pursuant to a second amended consent order of reference signed by Judge Seals on -- it's easy for me to say -- on September the 1st, 2023. I am authorized to hear all motions, and I think this ultimately, if it keeps going, will be a supplemental proceeding matter.

We're here today for the purposes of considering a motion to set aside a default judgment filed by the defendant. I'm going to call him debtor also for these purposes.

Marshall, was it for Palmetto Interstate Development II, Inc. and Leonard Watts?

MR. BIDDLE: No. Palmetto Interstate Development II is the entity that was in bankruptcy but it's associated with a different matter.

MR. MACDONALD: Okay.

MR. BIDDLE: But this one it's -- the parties are Leonard Ray Watts, Sego Plantation II Development, and Plantation at Colonial Charters, LLC.

MR. MACDONALD: Okay. And the motion

is just on behalf of Mr. Watts; is that right?

MR. BIDDLE: That's correct, yeah. I believe that the plaintiff owns half of the other defendants, which is an interesting matter. One of them they own 51 percent and one of them they own 50 percent on. At least there were some transactions back in the day on that. So that is always some interesting additions.

MR. MACDONALD: Okay. All right. And there are a couple things I want to clear up when we get -- so I have your memorandum, but it talks about Summit Shores, in a case of 2015-CP-26-01729. Is that this case or did we just get a wrong caption on that?

MR. BIDDLE: You know, what? Yeah. I think I grabbed the wrong caption. That's why. Because you were talking about that. Yeah.

MR. MACDONALD: Okay. That's fine. I'll accept it even with the wrong caption. I was just making sure --

MR. BIDDLE: No. I'll change that. That's on the memorandum; is that right?

MR. MACDONALD: Yeah. The memorandum. I think the motion is properly filed. I think the memorandum that you sent had the wrong caption,

which is fine. I read it anyway.

MR. BIDDLE: Okay. Well, listen. I appreciate that.

Now, Kevin might not agree to that, but, you know, we'll figure that out.

MR. MOLONY: I agree one hundred percent.

MR. BIDDLE: Okay. I thought you would have more people in your office, Kevin. You got everybody in there?

MR. MOLONY: They are just waiting to bust the door down, buddy.

MR. BIDDLE: I hear you. Okay. Good.

MR. MACDONALD: All right, Mr. Biddle, I'll hear from you, if you would like to give me your plea under your motion and your memorandum. Tell me what's going on and what you see as the case that you want to present to me.

MR. BIDDLE: Okay. And how do you want me to address you?

MR. MACDONALD: However you want. Just not "hey, dummy".

MR. BIDDLE: Mr. Referee?

MR. MACDONALD: Danny is fine. Probably better if it goes in the record. If it

ever gets appealed, or anything, you might obviously say Mr. Referee.

MR. BIDDLE: Okay. I'm going to say Mr. Referee. If I call you Your Honor, please don't forgive me because that's appropriate in this case.

MR. MACDONALD: Okay.

MR. BIDDLE: I guess from a background notice on this, these guys entered into an agreement back in North Carolina on some stuff, and they had some agreements and did a few things. Well, apparently both sides decided that things didn't go the way it was supposed to go. So one party filed a lawsuit, which is how it works. They filed it in Horry County. They served it upon both Mr. Watts and the other entities as well. I actually was the registered agent for both of those entities. They didn't serve me at my former office address, but they served me at my home address. The secretary of state, all of that stuff, was somehow supposed to be transferred. But in any event, I served as the registered agent for those entities, and I actually got served at my home address.

Mr. Watts was served at I believe his

home address in North Carolina, and I think he was actually served on October the 29th of 2016. The matter was filed on September 13th, which would make his answer, assuming he didn't get a response, due on November the 29th. He did not file it until -- he did file an answer in -- I guess in the loosest sense an answer, it's an answer, but on December the 20th, 2016. It's a purported -- and that's attached as an exhibit to mine. It looks like he took a magistrates court answer and modified it and signed it and got it clocked and filed it with the court, but, nonetheless, it's an answer.

The plaintiff's attorneys filed an affidavit of default in February of 2017.

I apologize. That's my sidekick.

Their affidavit of default designated that, you know, Mr. Watts was personally served, 30 days had filed since the service, no answer demur or notice of appearance has been served upon plaintiff or their attorneys by or on behalf of Defendant Watts. It talks about being in default, and then it says the other defendants were served by registered agent, you know, saying that no answer. Again, they used the same language.

Again, I know that Mr. Molony is not this lawyer. That nobody had been served with an answer.

Again, Mr. Watts filed his answer pro se, if you will, for basically holding a place, expecting at some point if something goes further somebody is going to turn around and pick up -- send them a notice or a mailing, or something to that effect. So they filed the affidavit of default, along with their affidavits of service, and sat on it.

They filed a motion in May of 2017. That affidavit of default was February 28, 2017. And then again the same lawyer for the plaintiff filed a motion for damages hearing and judgment by default. Same information. Attached to that was his affidavit. It says the basis of the motion, and obviously you can read, says that he was served -- he failed to serve an answer. Plantation, and then he differentiated at the bottom of the page, it says, has not filed or served an answer on the plaintiff. I mean, we have all done default judgments for the many years that we have practiced, and for all intents and purposes the judges are always pretty clear, you know, when you make a representation to the judge that, listen,

they are in default. There is nothing -- they always ask the same questions. I believe the attorney at this moment when he did this document and the previous affidavit specifically excluded the fact that an answer was filed. I believe -- and I believe if it were me or any other Horry County attorney standing before a judge and said, Your Honor, you know, I hadn't been served with an answer and then I have been filed or served with another one, and it goes -- it's the case where we are, I think the judge is not going to be happy. Good, bad, or indifferent. I know that they always bend over backwards for pro se litigants just to make sure that this thing doesn't come back and go there. I know we're dealing with --

So in any event, so he gets the motion for damages affidavit. They attach on the third page a certificate of service for the motion and the judgment by default. Again, they mailed it to Mr. Watts. Then they used my former mailing address, and I hadn't been at that office since 2015. And so as an attorney or registered agent I may have still had that office. I don't remember at that time. But in any event, I don't recall getting any of that information on that.

So they make the motion. The motion comes up. The damages here occurred on August the 1st of 2017. There is a memorandum when the same gentleman -- he's filed it. He goes through the same information. He talks about -- he puts a little more relevant facts into that document. Again, these were -- this is their memorandum in support of plaintiff's motion for damages hearing and judgment by default.

Do you have that document, Danny?

MR. MACDONALD: I have. I believe it was attached to the plaintiff's submission.

MR. BIDDLE: Okay.

MR. MACDONALD: Motion for the damages hearing.

MR. BIDDLE: Yes.

MR. MACDONALD: And attached to that is a certificate of mailing, where it was sent to you at the Postal Way address, which is your previous office --

MR. BIDDLE: That's correct.

MR. MACDONALD: -- and to Mr. Watts at two different addresses. So that has been provided to me --

MR. BIDDLE: Okay.

MR. MACDONALD: -- by the plaintiffs.

MR. BIDDLE: It may be that you don't have this memorandum. I'll make sure I send it. I thought that I had scanned and attached everything.

MR. MACDONALD: Which memorandum are you referring to again?

MR. BIDDLE: This is a memorandum by Mr. Edwards, who was the plaintiff's lawyer, in support of his damages hearing and judgment by default. So he filed his motion. This is his memorandum that was filed on July 21st, 2017, and I guess they -- there is no -- I don't see any certificate with that, but in any event I'll make sure I note that.

MR. MACDONALD: Okay.

MR. BIDDLE: But, again, it goes through and it repeats the same information of, you know, no answer was served by Mr. Watts. It fails and doesn't mention the fact that there was an answer actually filed. They have the damages hearing, which is the Form 4 that was attached. The judge grants them the judgment against all three parties, joint and several, $200,000 each from the beginning of the lawsuit up until August 1st, 2017. I find it interesting on the second

page of that order it says this judgment was entered on and a copy mailed first class or placed in the appropriate attorney's box on the attorneys of record when the parties when appearing pro se as follows: Aaron Eric Edwards, 622 Johnny Dodds Boulevard, Mt. Pleasant, South Carolina 29464. Nobody else was listed there. Even the clerk's office missed the fact that there was an answer filed. You know, again, whether it was served, whether it was out of time, at some point in time there was at least an address that an answer had been filed. The clerk missed it. He didn't represent it to the judge. I'm pretty sure he would have said, listen, there was an answer filed. Let's talk about that. Did they get the written notice, that you got to give them three days' notice prior to the hearing -- or at least three days' notice, whether that really gets us to that point.

Then they get their judgment in August of 2017 and then they sit on it for six years. And then they bring the execution on May 16th of 2023 against all of the entities, Mr. Watts, Plantation at Colonial Charters, and Sago Plantation II. And then it's kind of going. At that point in time

when Mr. Watts was served, he actually called me and said, hey, these guys are trying to serve me. Accept service and let's get it done. I immediately reached out, spoke to either the process server or he came here, and that's when Mr. Molony and I started communicating. And of course we have hit it off fairly well. We know a lot of the same people from our backgrounds, and those kind of things, and he has been a pleasure to deal with, and we haven't had any issues sideways one way or the other.

But the fact is is that this thing was sat on for six years and then they start the execution, the supplemental proceedings, the attachment, and all of those things. I know that the statute -- or the rule says that you've got -- to set aside a judgment, you've got to bring it within a year. And I guess the conversation or the thought is is that is that a year from when you discover when you've gotten that? I mean, I know that they try to do the finality, the judgments, and those kind of things.

But in this case, the reason it sat for that period of time is he wasn't noticed. I wasn't noticed. I mean, even though I was not practicing

at the time, assuming that I would have gotten a default judgment notice for a hearing -- and I got a number of things for Mr. Watts while I was not practicing law. I immediately picked up the phone and called him, put it in an envelope, asked him where he wanted me to mail it; I sent it to him. So that still would have been a good way for him to get notice of anything.

And, again, in this matter there was not notice. He didn't have an opportunity to address it. There obviously were -- what in his mind based on his answer there were some defenses that could have been raised, again assuming he could have grabbed and gotten an attorney to handle that. In his mind, you know, I got something in there. I got this filed, even though it wasn't timely. And he didn't say that. Those are my words, not his words. But, again, we can look at the dates. You know, at worst it was due on November the 29th. It was filed on December 20th. Let's say it's 21 or 22 days out of the time. They didn't file their affidavit of default until February of 2017.

But in any event, that's where we are. There are certainly defenses. There was obviously

an agreement between the parties as to what they were going to do. It's an interesting kind of a sideline on this is that there was also -- and part of their complaint was that there was some litigation and some foreclosure actions pending against this property. My understanding is the RHH Land Investors, LLC is a sophisticated business developer, realtor -- builder in the Fayetteville and the North Carolina area, which is in and around and close to where this was.

But Mr. Watts entered into ultimately some agreements with the lenders that were doing the foreclosures on that. They negotiated back and forth. They got agreements. They actually signed deeds in lieu of foreclosure, but yet those guys still went forward. Again, that, you know, is kind of a sideline on this.

But all of these parties are somehow related among a couple of different transactions. There certainly are some defenses to the provision. We have got an opportunity -- hopefully we'll get an opportunity to respond. I know that you look at it, gosh, it's been six years and we have got $200,000 worth of damage and then we have got $140,000 worth of interest that's been clicking

since the beginning of time. It appears to me that the lawyer that presented the default information and language to the judge I won't say he didn't tell the truth but I don't believe he told the whole truth, and I believe that that was a misrepresentation. I believe that would be considered a fraud on the court, which I think doesn't allow us to address or deal with the one-year limit.

I saw -- I mean, the rule says under 66, I mean, it says that rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding or to set aside a judgment for fraud upon the court. And I think that's kind of where we are on this thing, is that but for that language he would have had an opportunity to be there because they would have had to have some notice that this hearing was set, and it would have to have been done -- again, whether it was sent to me or it was sent to Mr. Watts, there would have been some provisions on that.

I know that that's not Mr. Molony. I know that that's not his firm. I wouldn't make those allegations, but it simply looks as if that

lawyer specifically -- he purposefully and specifically excluded the word, you know, filed and answered. I think he still could have gotten there. Again, it's my opinion. He probably could have gotten there by saying, listen, we filed an answer. It's not responsive. We have got to get notice. We have got to get him there. I think he still could have done it, but I just -- I just don't think the way he did it was appropriate. I think it -- it gives -- it was a fraud on the court. And I think at this point we would ask the court to set aside the default judgment. We'll get there. We'll deal with whether it's -- we can start back at the litigation, we can address the issues, and I would say probably get this matter resolved one way or another. Not to mention the fact that the plaintiffs own a half interest in both of these entities. They own 51 percent of one and 50 percent of the other. So they've sued themselves and Mr. Watts, and they have a judgment against themselves as well.

MR. MACDONALD: Sounds like the Critty case.

MR. BIDDLE: Yes, for sure.

MR. MACDONALD: All right. I'll hear

from the plaintiffs.

MR. WALLER: Thank you. First -- and I don't think Mr. Biddle is running from this at all, but under any calculation of time he is in default. He filed -- he made his filing 52 days after being served. That's in default. This is not some -- this is not someone that was being taken advantage of. This is not someone who was struggling to come up with the funds to pay a lawyer. This is also a very sophisticated businessman. He recently told the bankruptcy court that he could move some -- probably move some things around and get that accomplished if he needed to pay the $20.7 million claim right now.

So in the seven -- almost seven and a half months after he filed his -- what's captioned as his answer, he didn't hire a lawyer. He didn't do anything else, and so I don't want to lose sight of the fact that he was in default the whole time. Whatever he filed was still late.

And so the affidavit is correct. Mr. Biddle says in his memo at least two different times the affidavit is true. It says it leaves some stuff out. It may not be the whole truth but it is true.

One thing the -- Rule 12A, which is what we are talking about here, says served. It doesn't say anything about filing an answer. It says you can serve your answer. So that's a big part of it, too.

The case law -- I'll rely on my memo for case law. But the case law says if you file an answer late, it's not considered an answer. Otherwise, Rule 12A wouldn't have any teeth to it. So it's not technically an answer.

Mr. Watts was provided notice not only served with the affidavit of default at the address that he was personally served at, that's the same as the last page of that exhibit, he was also served at two different addresses the motion for default damages hearing, both at the address he was served, as well as the address that he handwrote into his filing made December 27th, 2016 of 21333 Katagwa Avenue also in Cornelius, North Carolina.

But he was served and was provided notice of not only the affidavit of default but also of the notice of hearing for default judgment and damages hearing. There is nothing in the record that says he wasn't served with that notice.

The other thing, too, to believe that

the affidavit was intentionally -- misled the judge or misled the court or was a fraud on the court, even though it's true, would require that we believe that the judge, Judge Culbertson, didn't review the record, did not -- was able to be taken advantage of because this filing from Mr. Watts is in the record. There is no question -- nobody is disputing it was in the record that he made a filing. So we would have to believe that not only was it not true, that it was an attempt to be fraudulent, but also the judge allowed that to happen by not reviewing the record.

And then also the case law is pretty clear, and I've cited this in my memorandum, that Mr. Watts would have had -- he would have known that this wasn't true, known that he had -- if he had served something, which there is no certificate of service of his answer in the record, he would have known that the affidavit of default was not accurate, and because he had the information, he can't bring a Rule 60b(3) motion because of that. He had that information then. He had plenty of time to challenge it then.

And, Mr. Biddle, to answer your question, it's one year from the date of the

judgment it has to be challenged, not the date of when he supposedly found out about it.

The other thing, too, the type of fraud, even if the -- even if the fraud alleged -- even it was complete perjury on behalf of the plaintiff's prior counsel, it was still direct and intrinsic. That was direct and intrinsic fraud, not the extrinsic fraud that is required to get outside of the one-year deadline.

The examples Mr. Biddle cites in his memorandum are all external things. Subordination of perjury is in there a couple of different times. This would have been -- if this is an incorrect affidavit by the lawyer, it would have been direct perjury and so that still would not get past the one-year deadline.

So we would defer to our memorandum for any case law. I don't think there is any question that Mr. Watts was served not only with the affidavit of default but also with the motion for default damages hearing. A roster would have been published. He has a responsibility -- once he files his answer, he has got the responsibility to keep up with his own case. So this can't be put entirely on anyone else. Mr. Watts has some

significant responsibility here.

MR. MACDONALD: As is typical, anytime I have a Zoom hearing, or anything, they decide to go to do work outside my window with lawn maintenance. It's in the office complex. I apologize.

One question, if I could. I don't see in what you guys sent me -- and I have not looked at the online file. I've seen where a notice was sent of the default, and Mr. Richter's office sent the -- the certificate of mailing of the motion for the default, but is there in the online record where they mailed the -- a notice of the hearing to the defendant? In other words, is there anything that we can show that he was given notice of the hearing date for the damages hearing? It's not in what you gave me. That doesn't mean it doesn't exist. I'm just saying I didn't see it in what you guys sent me.

MR. BIDDLE: I didn't see it either, Mr. Referee, and I specifically looked for it. It was one of those things. Again -- go ahead. I'm sorry.

MR. MACDONALD: That's fine. I was just asking if -- if there was anything that showed

that.

MR. MOLONY: We can certainly find out. I didn't realize until Mr. Biddle's memorandum on Saturday.

MR. WALLER: It was a college football Saturday hail Mary.

MR. MACDONALD: Yeah. That's fine. I was just looking to see. I don't -- again, it's not necessarily dispositive.

MR. BIDDLE: Sure.

MR. MACDONALD: But I would -- the clerk, I don't think, entered its own certificate of mailing, and I don't know whether or not Mr. Richter's office filed any -- I mean, when I do the default hearings, I file my own certificate of mailing. I don't know that I'm required to do that, but I do do that, just an absolute assurance that at least an attempt was made.

The order itself that Judge Culbertson signed clearly indicates he was held in default and that he issued a judgment. He doesn't specifically address one or the other some of the issues related to whether there was -- an answer was filed and he was still holding him in default. I think the law is pretty clear that even if you are late -- even

if your answer is late and even if it's before the entry of a default that a late answer is not considered an answer. You have to get leave from the court for it to be proper, and that apparently did not happen here.

I do note in the answer that he did file that a lawyer was going to be handling a counterclaim, and that apparently never happened, even up until the time that the motion and entry of the default was entered by Judge Culbertson.

MR. MOLONY: I think, Mr. Referee, once he filed the late answer, it's not considered an answer but it is considered a filing, and so he certainly at that point is in the case, even though he is in default, and so I think that he has some responsibility there to keep up with the case.

MR. MACDONALD: Yeah. I mean, I think there is some burden on him. I do. I guess my only concern -- and just because it's not necessarily in the record, it's certainly not addressed by the court. I don't know that I can just on what's in the record make a determination that he wasn't given notice of that hearing because I feel comfortable Judge Culbertson would have made some sort of inquiry. Because if it is a

liquidated damage, which this appears to be a liquidated damage, it was asking for a hearing to establish damages, that the court would have known that notice needed to be given. Even though the defendant had very little participatory rights, they still have a right to be there and participate to the limited amount the court allows. I find it difficult to say that Judge Culbertson didn't follow that process, which is normally show me some evidence that he was given notice. And it may have been he just turned to the clerk and asked if notice was sent. But that wouldn't be a filed document. That might just be on whatever recording there might be from that hearing. I assume nobody has ordered that transcript; is that right?

MR. BIDDLE: That's correct.

MR. MOLONY: I would imagine.

MR. MACDONALD: I'm not sure if it's still available, but I was just asking.

So I do take Mr. Biddle's point a little in that if the Richter firm and Mr. Edwards was aware that an answer had been filed that it should have been brought to the attention of the court. It is possible that they didn't know. I don't know whether or not in 2016 or 2017 -- 2016,

in 2016, whether or not we were getting electronic notifications that fill our inboxes up now.

MR. BIDDLE: For sure.

MR. MACDONALD: I don't know whether those did and whether or not -- when you get them sometimes you don't even pay attention to what it is they are sending you because you are going to get a hard copy of whatever it is anyway.

I do agree that there was a one-year time limit. I do think that Mr. Biddle -- I do think to the extent you want to avail yourself of it, there is -- the Rule 60 does indicate an independent action to relieve a party from a judgment, but I think that requires you to file an independent separate action, not a motion to set aside under Rule 60, or to the extent you are doing it under, what, 55 --

MR. BIDDLE: Yes, sir.

MR. MACDONALD: -- either. So having said all that, I think my ruling is going to be that I'm not -- that I will deny the motion to set aside. I would like if the plaintiff's firm would draft a proposed order. It doesn't have to be 25 pages. I would like -- I would like for it to say, one, the answer was late and, therefore, the

defendant was in default, that he did file an answer but he did not avail himself of determining any other action that was necessary on his behalf during the pendency, and he has waited, what is this, over five years, six years, since the entry of the order to raise the issue of setting aside the default.

I don't think that I have the ability to undo Judge Culbertson's orders that hold them in default and issued a judgment against them. Do I wish it had a little more information in there? I do. But I don't think I have enough -- been presented for that for me to set that aside.

So I'm going to deny the motion. Excellent arguments.

I understand fully, Mr. Biddle, your client's concern that he had filed an answer and that he was assuming that the attorneys for the plaintiff at the time knew about the answer. And I don't know that we can determine that. Certainly it would have been better if the court could have still held him in default and still had the same hearings. You know?

MR. BIDDLE: I agree with that. I think at worst-case scenario it's a notice of

appearance, at worst.

MR. MACDONALD: Right.

MR. BIDDLE: I understand.

MR. MACDONALD: And the concern that I have and the reason why I was asking is I do think there is some concern that if the judgment was entered against him without following the rules requirements of the defaulting party that if you are not just doing liquidated damages that they have a right to appear and they weren't given notice that caused me concern, but I don't think we know that. And I just feel comfortable Judge Culbertson would have gone through those rules and said --

MR. BIDDLE: I agree.

MR. MACDONALD: I mean, if he would have just come on the bench, but he had been on the bench a long time.

MR. BIDDLE: Yeah. Absolutely. Every time I've ever appeared before Judge Culbertson he is very thorough. Again, I feel like if he would have known he had gone through that process, but, again, it's hard to pick a bone six years later.

MR. MACDONALD: Certainly I think you made every effort to protect your client's interest

in raising the issue.

So having disposed of that, what else do we have that -- was this all we were going to take care of today?

MR. MOLONY: Yes, sir. Hopefully we will be able to -- Mr. Biddle and I will come together and see what we can get done, but for now we purposely wanted to let you dispose of this one way or the other. We will try to get together to see what we can do now that this is out of the way, and it may free up the ability to see what we can work out. If not, we will look to be there next week. And I will certainly -- I'll give better directions and e-mail everyone, once Mr. Biddle and I have had the opportunity to get on the same page. I don't believe all the motions that have been filed will need to be heard. A lot of this was going on prior to Marshall and I having the ability to talk and communicate, and I think we both pride ourselves on that. Obviously, if you get knucklehead clients sometimes --

MR. MACDONALD: You got to do what you got to do.

MR. MOLONY: -- you have to deal with that. But it's not a situation where we are at all

-- we should be able to resolve a lot of the pending motions, other than the pending rule and maybe one or two of the pending motions, but I will certainly provide y'all with that --

MR. MACDONALD: Okay.

MR. MOLONY: -- prior to the end of the week for sure.

MR. MACDONALD: All right. Yeah, if you would do that as soon as you can. Just let me know what motions still need to be considered and dealt with on Monday the 25th. And it's at 10, right? Y'all are going to be here?

MR. MOLONY: That's all right, yes.

MR. MACDONALD: Okay. And then we've got to set aside a couple hours for that.

And so essentially that would be handling any motions and then actually hearing either testimony or taking evidence or listening to arguments about the actual execution against property, and I see there is some motions for appointing a receiver and a couple other things, right?

MR. MOLONY: Those would be the only two, Mr. Referee, that we would want heard for now that I can -- it's just a rule to show cause

hearing itself, to show cause pursuant to that order which we could say it is staying alive. And then the receivership motion. So those are two I really want to pursue next week.

But, again, hopefully Mr. Biddle and I will be able to do our jobs and see what we can come up with in between now and then. We will certainly keep you up to date and --

MR. MACDONALD: And certainly if you need -- if you think you are getting close and you want to put it off a little bit, we can certainly try to make time for you in October.

MR. MOLONY: Perfect. Like I said, I got a baby coming out next Friday so thank y'all for working with me there.

MR. BIDDLE: I don't want to get you in trouble.

MR. MOLONY: That's right.

MR. MACDONALD: Let me know. Send me a draft of the order and send it to Marshall. Send it in Word, if you would. We have got to figure out how I sign it and get it filed, but I will certainly try to move -- turn that around quickly and -- so it can get filed so if any motions need to be filed related to that you can. I will -- I'm

not just sure -- I can't sign it electronically for the court. I don't have one of those things. We will have to call the clerk of court to find out how I file this order, and we'll just see. Send it to me. I'll look at it. If there is any edits to it, I'll certainly send the edits back to you. I don't expect there will be. It doesn't have to be long. But certainly the arguments that were made if you can put a little bit of that in there and just -- I do think he was in default. I do think the order is proper by Judge Culbertson, and I don't think they have met the one-year requirement. I think I would say even though it's not clear whether or not the affidavit is fully disclosing, there is no evidence that it was intentionally not fully disclosing. Put it that way.

MR. MOLONY: All right. Thank you so much.

MR. MACDONALD: All right.

(The hearing concluded at 2:45 p.m.)

CERTIFICATE OF REPORTER

I, Karen Nellius, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 31st day of December, 2023 at Charleston, Berkeley County, South Carolina.



Karen Nellius, RPR
My Commission Expires
November 14, 2024

ELECTRONICALLY FILED - 2023 Sep 26 5:09 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **THE FIFTEENTH JUDICIAL CIRCUIT**
RHH Land Investors, LLC, Plaintiff, vs. Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Defendants.	County C/A No. 2016-CP-26-06056 **ORDER DENYING MOTION TO SET ASIDE JUDGMENT**

This matter came before me, as Special Referee, on September 18, 2023 for a hearing on Defendant, Leonard R. Watts' (Defendant, Watts) Motion to Set Aside Default and Motion to Stay Supplemental Proceedings and Enforcement of Judgment. This matter was referred to me as Special Referee by the Second Amended Consent Order of Reference of Judge William H. Seals, Jr. filed on September 1, 2023. Marshall Biddle, Esquire was present on behalf of the moving Defendant. Plaintiff was represented by Jonathan Waller, Esquire and Kevin Molony, Esquire. After reviewing the record, hearing the respective arguments made by Counsel for both the Plaintiff and Defendant, and reviewing all filings presented by each as it relates to this matter, I find as follows:

1. The Defendant, Watts was personally served with the Summons and Complaint on October 29, 2016.
2. The Defendant, Watts filed his *pro se* Answer on December 20, 2016. There is no evidence that the Defendant, Watts mailed or otherwise served his Answer on the Plaintiff or its counsel.
3. Plaintiff's Counsel filed a Motion for Entry of Default on February 28, 2017.
4. Judge Benjamin H. Culbertson entered a Default Judgment against the Defendant, Watts on August 1, 2017.

034

ELECTRONICALLY FILED - 2023 Sep 26 5:09 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

5. The Defendant, Watts was in default due to filing his Answer Fifty-One (51) days after he was served with the Summons and Complaint.
6. Subsequent to filing his late answer, the Defendant, Watts did nothing to avail himself to any other action(s) associated with the case. Instead, the Defendant waited six (6) years to move to have the Default Judgment set aside.
7. Although it is unclear whether the Plaintiff's Affidavit of Default was fully disclosing of all facts relevant to the matter, no evidence has been presented that the Affidavit filed by Plaintiff's Counsel was intentionally misleading in any way, or fraudulent in any way.
8. No evidence was submitted that Judge Culbertson, who held the Defendant, Watts in default and issued the Default Judgment, did not review the court file and determine that a Default Judgment being entered against the Defendant, Watts was proper.
9. The Defendant, Watts filed this Motion to Set Aside Default Judgment and Stay Supplemental Proceedings and Enforcement on August 11, 2023.

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." *Rule 55(c), SCRCP*. "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." See, Sundown Operating Co. v. Intedge Indus., Inc., 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." See, Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989).

When a party moves for Relief from Judgment or Order under Rule 60 (b), SCRCP, "[t]he motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more

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ELECTRONICALLY FILED - 2023 Sep 26 5:09 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

than one year after the judgment, order or proceeding was entered or taken." The standard for relief form entry of a default judgment is more stringent than the standard for relief from the entry of default. See, Roberson v. Southern Finance of SC, Inc. 365 S.C. 6, 615 S.E. 2d 112 (2005).

Unless an extension is granted, a defendant must **serve** his answer within thirty (30) days "after the service of the complaint upon him." Rule 12(a), SCRCP. The Defendant, Watts filed his pleading on December 20, 2016, which is twenty-two (22) days late. There is no evidence an extension of time to Answer was granted. Therefore, the Defendant, Watts was in default under the South Carolina Rules of Civil Procedure. Additionally, there is no evidence in the record that Defendant, Watts ever served his "Answer" on Plaintiff, at any time, and certainly not within thirty (30) days.

The evidence and record clearly indicate that the Defendant, Watts failed to timely file or serve his Answer, and was therefore properly held in default. Since this Motion to be Relived was filed six (6) years after the Default Judgment was entered, I find it is also not timely. Even if it was timely, the Defendant, Watts has provided insufficient proof that the Default Judgment was the product of any of the basis set forth in Rule 60(b), SCRCP, including fraud, misrepresentations, or other misconduct of an adverse party. Additionally, since a Default Judgment was entered, and Rule 55(c), SCRCP does not apply, the Defendant, Watts has failed to establish good cause for relief from an entry of default.

036

IT IS, THEREFORE, ORDERED that the Motion to Set Aside Default and Motion to Stay Supplemental Proceedings and Enforcement of Judgment in this Matter is hereby DENIED.

Daniel John MacDonald, Sr., Esquire
Special Referee, Horry County

September ___, 2023
Horry County, South Carolina

ELECTRONICALLY FILED - 2023 Sep 26 5:09 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

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ELECTRONICALLY FILED - 2023 Nov 14 12:53 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA **COUNTY OF HORRY**	**IN THE COURT OF COMMON PLEAS** **THE FIFTEENTH JUDICIAL CIRCUIT**
RHH Land Investors, LLC, Petitioner, vs. Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Respondents.	County C/A No.: 2016-CP-26-06056 **ORDER DENYING MOTION TO RECONSIDER ORDER DENYING MOTION TO SET ASIDE DEFAULT AND MOTION TO STAY SUPPLEMENTAL PROCEEDINGS & ENFORCEMENT OF JUDGMENT**

THIS MATTER came before the Court on October 27, 2023 for a hearing on Defendant, Leonard R. Watts', Motion to Reconsider Order Denying Motion to Set Aside Default and Motion to Stay Supplemental Proceedings and Enforcement of Judgment. Marshall Biddle, Esq. was present on behalf of the Defendant. Plaintiff was represented by Jonathan Waller, Esq. The parties consented to conducting the hearing for this Motion without a court reporter and/or the zoom hearing being electronically recorded. After reviewing the record, hearing the respective arguments made by Counsel for both the Plaintiff and Defendant and reviewing all filings presented by each as it relates to this matter, the Court finds as follows:

1. Defendant Watts' Motion to Reconsider contains arguments that were raised during the Motion to Set Aside Default Judgment (i.e., Notice of Motion Hearing, Damages Hearing) and although those arguments were raised and discussed during the hearing of said Motion, those arguments were considered and ruled upon in the Order that is the subject to the Motion to Reconsider; and

2. The Affidavit of the Bridgett Williamson, Deputy Clerk Common Pleas Supervisor, was not filed until September 27, 2023, the day following the filing of the Order Denying Motion to Set Aside Default Judgment and therefore represents new evidence and therefore I find that the arguments based on this new evidence are not admissible; and

3. The remaining arguments raised as a result of the Affidavit of Bridgett Williamson regarding actual notice upon Defendant and the effect on the judgment are based on evidence that came to light after the original Motion was heard and therefore I find those arguments are not admissible.

038

IT IS THEREFORE ORDERED that the Motion to Reconsider the Order Denying Motion to Set Aside Default and Motion to Stay Supplemental Proceedings and Enforcement of Judgment in this Matter is hereby DENIED.

Daniel J. MacDonald, Sr., Esquire
SC Bar #11986
Special Referee, Horry County

November 13, 2023
Myrtle Beach, South Carolina

ELECTRONICALLY FILED - 2023 Nov 14 12:53 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

039

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2606056

RHH Land Investors LLC	RHH Land Investments LLC	Leonard R Watts SAGO Plantation II Development Inc	Plantation at Colonial Charters LLC

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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:

ORDER INFORMATION

Plaintiff's Motion for Judgment by Default and Damages Hearing is GRANTED. The plaintiff is granted judgment against the defendants for $200,000.00, plus prejudgment interest at the statutory rate from 9/13/2016 until 8/1/2017 and post judgment interest at the statutory rate thereafter.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Judgment is joint and severable.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
RHH Land Investors, LLC also d/b/a RHH Land Investments, LLC	Leonard R. Watts	$200,000.00, plus pre-judgment interest from 9/13/2016 until 8/1/2017 and post judgment interest thereafter.
RHH Land Investors, LLC also d/b/a RHH Land Investments, LLC	The Plantation at Colonial Charters, LLC	$200,000.00, plus pre-judgment interest from 9/13/2016 until 8/1/2017 and post judgment interest thereafter.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2-17)

ELECTRONICALLY FILED - 2017 Aug 01 4:48 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

RHH Land Investors, LLC also d/b/a RHH Land Investments, LLC	Sago Plantation II Development, Inc.	$200,000.00, plus pre-judgment interest from 9/13/2016 until 8/1/2017 and post judgment interest thereafter.

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2148 Judge Code	Date

For Clerk of Court Office Use Only

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

Aaron Eric Edwards 622 Johnnie Dodds Blvd. Mount Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Grace Hurley

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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ELECTRONICALLY FILED - 2017 Aug 01 4:48 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

Horry Common Pleas

Case Caption: RHH Land Investors LLC , plaintiff, et al VS Leonard R Watts , defendant, et al

Case Number: 2016CP2606056

Type: Order/Form 4

Presiding Judge

s/Benjamin H. Culbertson, Judge Code 2148

042

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056
ELECTRONICALLY FILED - 2023 Aug 21 5:32 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	CASE NO.: 2016-CP-26-6056
RHH LAND INVESTORS, LLC also d/b/a RHH LAND INVESTMENTS, LLC PLAINTIFF	
VS.	Affidavit of Default
LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC, and SAGO PLANTATION II DEVELOPMENT, INC. DEFENDANTS	

2017 FEB 28 PM 12:17

PERSONALLY appeared before me, Aaron E. Edwards of The Richter Firm, LLC, who being duly sworn, deposes and says as follows:

1. I am the attorney representing the plaintiff in the above captioned matter.
2. The Summons and Complaint in the above captioned matter were personally served on the Defendant, Leonard R. Watts, on October 29, 2016. (Exhibit A).
3. More than thirty (30) days, exclusive of the day of service, have elapsed since service, and no answer, demurrer, or notice of appearance has been served upon Plaintiff or their attorneys, by or on behalf of Defendant Watts.
4. Defendant Watts is now in default and the clerk is requested to enter his default upon the calendar (file book).
5. Defendant The Plantation at Colonial Charters, LLC was served via its Registered Agent, James Marshall Biddle, on October 4, 2016. (Exhibit B).

043

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056
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6. Defendant The Plantation at Colonial Charters, LLC was thereafter served via Defendant Watts on October 29, 2016 (Exhibit C).

7. More than thirty (30) days, exclusive of the day of service, have elapsed since the service, and no answer, demurrer, or notice of appearance has been served upon the Plaintiffs or their attorneys, by or on behalf of Defendant The Plantation at Colonial Charters, LLC.

8. The Defendant, The Plantation at Colonial Charters, LLC, is now in default and the clerk is requested to enter his default upon the calendar (file book).

9. Defendant Sago Plantation II Development, Inc. was served via its Registered Agent, James Marshall Biddle, on October 4, 2016 (Exhibit D).

10. Defendant Sago Plantation II Development, Inc. was thereafter served via Defendant Watts on October 29, 2016 (Exhibit E).

11. More than thirty (30) days, exclusive of the day of service, have elapsed since the service, and no answer, demurrer, or notice of appearance has been served upon the Plaintiffs or their attorneys, by or on behalf of Defendant Sago Plantation II Development, Inc.

12. The Defendant, Sago Plantation II Development, Inc., is now in default and the clerk is requested to enter his default upon the calendar (file book).

THE RICHTER FIRM, LLC

By: _____

Lawrence E. Richter, Jr.
Aaron E. Edwards
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
P: (843) 849-6000

044

F: (843) 881-1400

Attorney for the Plaintiffs

SWORN to before me this

24 day of February, 2017

Tarsha W. Hyler

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: April 5, 2020

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056
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AFFIDAVIT OF SERVICE

State of South Carolina | County of Horry | Common Pleas Court

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **Leonard R. Watts, 19411 Schooner Drive, Cornelius, NC 28031.** I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct, 2016 at 9:40A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served the within-named person.

( ) SUBSTITUTE SERVICE: By serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below.

Military Status: ( ) Yes or ( ) No If yes, what branch? _____

COMMENTS: _____

2016 NOV 14 AM 11:54

Age 55 Sex (M) F Race White Height 6'1" Weight 220 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2016001821

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COPY

EXHIBIT A

046

Myrtle Beach Process Server, LLC

STATE OF SOUTH CAROLINA,)
COUNTY OF **Horry**)

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF SERVICE

RHH Land Investors, LLC
also d/b/a RHH Land Investments, LLC
Plaintiff(s)

vs.

Leonard R Watts;
The Plantation at Colonial Charters, LLC;
and Sago Plantation II Development, Inc

15TH JUDICIAL CIRCUIT

FILE NO: **2016-CP-26-6056**

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the **Civil Action Coversheet; Summons; Complaint** in this action

(Describe document(s) served)

on **The Plantation at Colonial Charters, LLC** by delivery to

☐ _____ personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

☒ **James Marshall Biddle** the **Registered Agent** of **The Plantation at Colonial Charters, LLC**
(Name of person served) (Title) (Name of corporate party served)

and leaving with ☒(him) ☐(her) a copy at **142 University Drive** (home)
(Street address)

in **Conway** (City or Town) **Horry** County, South Carolina,

on **October 4, 2016** at **8:14** o'clock **AM**

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed before me
this 25th day of **October**, **2016**

Becky J. Adams
Notary Public for South Carolina
My Commission expires 11/13/26

John T. Millen
John Millen
Process Server
Post Office Box 2114, Myrtle Beach SC 29578

SCCA 402 (5/02)

EXHIBIT B

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056
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2016 OCT 31 PM 2:07
JULIE HUGGINS-HALL
CLERK OF COURT

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AFFIDAVIT OF SERVICE

State of South Carolina | County of Horry | Common Pleas Court

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC ·
AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **The Plantation At Colonial Charters, LLC Leonard R Watts as Registered Agent, 19411 Schooner Drive, Cornelius, NC 28031.** I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct. 20 16 at 9:50 A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Leonard Watts as Registered Agent.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: _____

Age 55 Sex (M) F Race White Height 6'1" Weight 220 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October, 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2016001822

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EXHIBIT C

048

Myrtle Beach Process Server, LLC

STATE OF SOUTH CAROLINA,)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF SERVICE

RHH Land Investors, LLC
also d/b/a RHH Land Investments, LLC)
Plaintiff(s)

15TH JUDICIAL CIRCUIT

vs.
Leonard R Watts;
The Plantation at Colonial Charters, LLC;
and Sago Plantation II Development, Inc

FILE NO: **2016-CP-26-6056**

2016 OCT 5 PM 2:07
CLERK OF COURT

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the **Civil Action Coversheet; Summons; Complaint** in this action
(Describe document(s) served)

on **Sago Plantation II Development, Inc** by delivery to

☐ _____ personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

☒ **James Marshall Biddle** (Name of person served) the **Registered Agent** (Title) of **Sago Plantation II Development, Inc** (Name of corporate party served)

and leaving with ☒(him) ☐(her) a copy at **142 University Drive** (home)
(Street address)

in **Conway** (City or Town) **Horry** County, South Carolina,

on **October 4, 2016** at **8:14** o'clock **AM**

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed before me
this 25th day of **October**, **2016**

Becky J. Adams
Notary Public for South Carolina
My Commission expires 1/13/26

John Millen
John Millen
Process Server
Post Office Box 2114, Myrtle Beach SC 29578

SCCA 402 (5/02)

EXHIBIT
D

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056
ELECTRONICALLY FILED - 2023 Aug 21 5:32 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Horry** **Common Pleas Court**

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **Sago Plantation II Development, Inc Leonard R Watts as Registered Agent, 19411 Schooner Drive, Cornelius, NC 28031.** I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct., 2016 at 9:40A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Leonard Watts as Registered Agent.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: _____

Age 55 Sex (M) F Race White Height 6'4" Weight 320 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October, 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2016001823

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EXHIBIT E

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CASE NO.: 2016-CP-26-6056
	)	
RHH LAND INVESTORS, LLC also d/b/a RHH LAND INVESTMENTS, LLC	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	
	)	
LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC, and SAGO PLANTATION II DEVELOPMENT, INC.	)	
	)	
DEFENDANTS	)	

2017 FEB 28 PM 12:17

CERTIFICATE OF SERVICE

I DO HEREBY certify that on this date I have served the Affidavit of Default by mailing a true and correct copy of the same via U.S. Mail to Defendants at the address indicated as follows:

Leonard Ray Watts
19411 Schooner Drive
Cornelius, NC 28031

James Marshall Biddle
142 University Dr.
Conway, SC 29526
Registered agent for Sago Plantation II Development, Inc. and The Plantation at Colonial Charters, LLC

Michelle Stith

February 24, 2017
Mt. Pleasant, South Carolina

051

ELECTRONICALLY FILED - 2017 May 25 10:54 AM - HORRY - COMMON PLEAS - CASE#2016CP2606056
ELECTRONICALLY FILED - 2023 Aug 21 5:32 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA COUNTY OF HORRY RHH LAND INVESTORS, LLC also d/b/a RHH LAND INVESTMENTS, LLC PLAINTIFF VS. LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC, and SAGO PLANTATION II DEVELOPMENT, INC. DEFENDANTS	IN THE COURT OF COMMON PLEAS CASE NO.: 2016-CP-26-6056 **Motion for Damages Hearing and Judgment by Default**

YOU WILL PLEASE TAKE NOTICE, that the undersigned, as attorney for the Plaintiff, will move before the presiding judge for the Horry County Court of Common Pleas, within ten (10) days from the service of the Notice of Motion and Motion, or as soon thereafter as counsel may be heard, for a damages hearing and a judgment by default.

The basis of this Motion is that the Defendant, Leonard R. Watts, was served with the Summons and Complaint on October 29, 2016, and has failed to serve an Answer on the Plaintiff. The remaining Defendants, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., were served via their Registered agent, James Marshall Biddle, on October 4, 2016 and served again via Defendant Watts on October 29, 2016. Neither Defendant, The Plantation at Colonial Charters, LLC or Sago Plantation II, Development, Inc. has not filed or served an Answer on the Plaintiff.

052

Plaintiff is entitled to a judgment by default against the Defendants and an award of damages in an amount to be determined at the hearing of this matter.

WHEREFORE, Plaintiff prays that the Court enter an order granting Plaintiff judgment against the Defendants, and awarding damages in an amount to be determined at the hearing of this motion, including attorney's fees, and for such other and further relieve as this Court deems just and appropriate.

THE RICHTER FIRM, LLC

By:___**s/ Aaron E. Edwards**_____

Lawrence E. Richter, Jr.
Aaron E. Edwards
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
P: (843) 849-6000
F: (843) 881-1400

Attorney for the Plaintiff

May 25, 2017
Mt. Pleasant, South Carolina

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053

I DO HEREBY certify that on this date I have served the Motion for Damages Hearing and Judgment by Default by mailing a true and correct copy of the same via U.S. Mail to Defendants at the address indicated as follows:

Leonard Ray Watts
19411 Schooner Drive
Cornelius, NC 28031

Leonard Ray Watts
21333 Catawba Ave
Cornelius, NC 28031

James Marshall Biddle
4012 Postal Way, Suite A
Myrtle Beach, South Carolina 29579
Registered agent for Sago Plantation II Development, Inc. and The Plantation at Colonial Charters, LLC

s/ Michelle Stith

Michelle Stith

May 25, 2017
Mt. Pleasant, South Carolina

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP2606056

PLAINTIFF(S)		DEFENDANT(S)	
RHH Land Investors LLC	RHH Land Investments LLC	Leonard R Watts SAGO Plantation II Development Inc	Plantation at Colonial Charters LLC

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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:

ORDER INFORMATION

Plaintiff's Motion for Judgment by Default and Damages Hearing is GRANTED. The plaintiff is granted judgment against the defendants for $200,000.00, plus prejudgment interest at the statutory rate from 9/13/2016 until 8/1/2017 and post judgment interest at the statutory rate thereafter.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: Judgment is joint and severable.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
RHH Land Investors, LLC also d/b/a RHH Land Investments, LLC	Leonard R. Watts	$200,000.00, plus pre-judgment interest from 9/13/2016 until 8/1/2017 and post judgment interest thereafter.
RHH Land Investors, LLC also d/b/a RHH Land Investments, LLC	The Plantation at Colonial Charters, LLC	$200,000.00, plus pre-judgment interest from 9/13/2016 until 8/1/2017 and post judgment interest thereafter.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

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RHH Land Investors, LLC also d/b/a RHH Land Investments, LLC	Sago Plantation II Development, Inc.	$200,000.00, plus pre-judgment interest from 9/13/2016 until 8/1/2017 and post judgment interest thereafter.
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2148

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

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

Aaron Eric Edwards 622 Johnnie Dodds Blvd. Mount Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Grace Hurley

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Horry Common Pleas

Case Caption: RHH Land Investors LLC , plaintiff, et al VS Leonard R Watts , defendant, et al

Case Number: 2016CP2606056

Type: Order/Form 4

Presiding Judge

s/Benjamin H. Culbertson, Judge Code 2148

057

ELECTRONICALLY FILED - 2023 Jun 07 3:08 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA **COUNTY OF HORRY** RHH Land Investors, LLC, Petitioner(s), vs. Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Respondent(s).	**IN THE COURT OF COMMON PLEAS** **THE FIFTEENTH JUDICIAL CIRCUIT** County C/A No.: 2016-CP-26-06056 **AFFIDAVIT**

Personally, appeared before me, Kevin N. Molony, who first being duly sworn deposes and says that:

1. He is an attorney of record for the Petitioner, RHH Land Investors, LLC, in this matter.
2. The Petitioner attempted to execute on its judgment against the Respondents, Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., but the execution was returned "Nulla Bona".
3. Respondents refuse to pay the judgment.
4. Upon information and belief, Respondents, have assets in Horry County, South Carolina with which to satisfy the judgment in whole or in part.
5. Respondents are justly indebted to the Petitioner in the amount of Two Hundred Thousand Dollars ($200,000.00), plus reasonable attorneys' fees and costs of collection and interest at the Stat from the date of judgment, until such time as the total amount is paid.

[SIGNATURE PAGE TO FOLLOW]

058

FURTHER AFFIANT SAYETH NOT.

Kevin N. Molony
SC Bar No.80679
Angell Molony, LLC
210 Newberry St. NW
Aiken, SC 29801
(P) 803.335.1449
(F) 803.335.5422
KEVIN@ANGELLMOLONY.COM

Attorney for the Petitioner

SWORN and subscribed to before me

this 7th day of June, 2023.

Notary Public for South Carolina

My Commission Expires: 08/21/2023

ELECTRONICALLY FILED - 2023 Jun 07 3:08 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

059

ELECTRONICALLY FILED - 2023 Jun 07 3:08 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA **COUNTY OF HORRY** RHH Land Investors, LLC, Petitioner, vs. Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Respondents.	**IN THE COURT OF COMMON PLEAS** **THE FIFTEENTH JUDICIAL CIRCUIT** County C/A No.: 2016-CP-26-06056 **PETITION FOR** **SUPPLEMENTAL PROCEEDINGS**

TO: THE HONORABLE ALAN D. CLEMMONS , MASTER-IN-EQUITY FOR HORRY COUNTY

Petitioner, RHH Land Investors, LLC, through its undersigned counsel, sets forth and alleges as follows:

1. Petitioner was granted a Judgment (bearing Case No: 2016-CP-26-06056) in Horry County on August 1, 2017 entered against the above captioned Respondents, Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc. (hereinafter referred to as "Respondents"), in the principal amount of $200,000.00, plus post judgment interest at the Stat.
2. An Execution was signed by the Clerk of Court of Horry County and returned *Nulla Bona* by the Horry County Sheriff's Office, filed with the Clerk of Court of Horry County on June 6, 2023.
3. There is still due and owed on the Judgment the amount of Two Hundred Thousand Dollars ($200,000.00), plus reasonable attorneys' fees, costs of collection, and prejudgment interest at the Statutory Rate from September 13, 2016 until August 1, 2017 and post judgment interest at the Statutory Rate from August 2, 2017 until paid in full.
4. As of the date of this filing, Petitioner is informed and believes that the total amount of accrued interest is currently $143,203.37 (One Hundred Forty-Three Thousand Two Hundred Three Dollars and Thirty-Seven Cents). Therefore, the Principal and Interest

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currently due by Respondent is $343,203.37 (Three Hundred Forty-Three Thousand Two Hundred Three Dollars and Thirty-Seven Cents), plus attorneys' fees, costs of collection and expenses.

5. Petitioner is informed and believes that Respondents own nonexempt assets, either titled individually or in the name of a business association in which Respondents hold an interest, which the Respondent unjustly refuses to apply toward satisfaction of the Judgment.

6. Specifically, Petitioner is informed and believes the Respondents holds a 100% (One Hundred Percent) membership interest in **Palmetto Interstate Development II, Inc.** pursuant to Palmetto Interstate Development, Inc.'s May 15, 2023 filing in the United States Bankruptcy Court, District of South Carolina, Case Number 23-01102 (***attached hereto as Exhibit 1***).

7. Pursuant to South Carolina Code §15-19-220, Petitioner is informed and believes it is entitled to an immediate Order of Attachment and Levy for the Respondent's shares (100% ownership) of **Palmetto Interstate Development II, Inc.**, together with any interest and profits thereon, ordering said shares, stock, interest, etc. to be levied upon and sold to satisfy its Judgment against the Respondent. "*Attachment is a statutory remedy available only under the circumstances provided for in the statute. The statute specifically allows attachment in an action for the recovery of money against a nonresident defendant.* S.C.Code Ann. § 15-19-10 (1976). *First Union Mortg. Corp. v. Thomas*, 451 S.E.2d 907, 317 S.C. 63 (S.C. App. 1994) See S.C.Code Ann. § 15-19-220 (1976) (***all property of [the] defendant in the state is subject to attachment except property constitutionally exempt from attachment***); see also *Charles R. Allen, Inc. v. Island Co-op. Servs. Co-op. Ass'n, Ltd.*, 234 S.C. 537, 109 S.E.2d 446 (1959).

8. Petitioner is informed and believes that for there to be a meaningful examination of Respondents for the purposes enumerated above, that Respondents provide the Petitioner with any and all of the following records **within fifteen (15) days from the date of service hereof:**

   1) Current Checkbooks and/or bank or other financial institution accounts in the name of said Respondents or to which Respondents have signatory authority, including but not limited to, checking, IRA's, Roth IRA's, 401(k), money market, savings accounts, credit accounts, along with bank statements and check images on said accounts from January 1, 2020 to the present day.

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2) Detailed statements of accounts received belonging to Respondents, whether or not the same may be pledged or hypothecated.

3) Certificates of deposit, savings account passbooks, stock certificates in any publicly held or closely held corporations as well as any bonds owned by Respondents either separately or jointly held with others.

4) Balance sheets, profit and loss statements or financial statements, audited or unaudited, prepared and issued by or for Respondents since January 1, 2020.

5) Documents submitted to any bank or financial institution, or any other person or entity, by the Respondents, for any loan or advance, in any capacity (borrower, guarantor, or surety) for the past three years.

6) Documents concerning any interest in, or claimed title to, any certificates of deposit, letters of credit, money orders, cashier's checks, traveler's checks, bank deposits or escrow funds owned or held by the Respondents in the past three years.

7) Documents related to any account in which any of the Respondents' earnings or other income has been deposited into in the past three years, whether the Respondents continued to have an interest in it or not.

8) Documents evidencing in any application signed by the Respondent or on behalf of the Respondents or the Respondents' spouse and/or children, to open a foreign or offshore financial account in the name of the Respondents or any other entity.

9) Copies of any Individual Retirement Account or 401(k)s that were "rolled over".

10) Certificates of title to any vehicles, (including, but not limited to, automobiles, tractors, trucks, motorcycles, ATV's, four-wheelers, golf carts, trailers, or go-carts), mobile homes, water crafts (including motors therefore), agricultural equipment, aircrafts, or construction equipment owned by the Respondents either separately or jointly; provided that if there exists a lien on any of said vehicle, mobile homes, or water crafts, then in lieu of certificates of title, a written statement detailing a description of each item including year, make, model, serial number, present value, and the amount of any lien therein shall be furnished.

11) Copies of all dock slips, deeds, leases, licenses, or other documentation evidencing the right to dock any watercraft, whether the Respondents have a legal or beneficial interest in.

12) Any Deeds, Mortgages, Notes, Contracts of Sale, and Settlement or Closing Statements relating to any real estate transactions involving Respondents since January 1, 2013 or relating to real estate currently owned by Respondents, either individually or jointly with others.

13) Any and all documents that refer to, reflect, or relate to encumbrances on any real property owned by the Respondents.

14) Any and all documents evidencing ownership of real property in which the Respondents currently enjoys a direct or indirect beneficial interest.

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15) Any and all checks, receipts, deeds or other evidence of the sale or transfer of any real property in which the Respondents have a legal or equitable ownership interest in, within the past three years.

16) Any and all lease agreements for real or personal property in which the Respondents are the lessor, landlord, lessee, or otherwise has a beneficial interest in.

17) Any and all documents that evidence the Respondents' name being on any real property tax records, as payor or trustee for the past three years.

18) Any and all documents evidencing any time-shares of which use the Respondents enjoys.

19) Copies of any appraisals or other forms of valuation for any property that the Respondent has an interest in or had an interest within the past three years.

20) Promissory Notes or Mortgages the Respondents signed during the past three years.

21) Copies of all deeds/mortgages to which the Respondents hold property as tenants by the entireties, tenants in common or joint tenants, or which the Respondents have any interest in.

22) Copies of any life insurance policies owned by Respondents, along with any information pertaining to cash values or any loans outstanding on any of said policies.

23) A written inventory or any items of jewelry, antiques, guns, paintings, items with fair market value of $999.00 or more, or art (collectively "Personal Property") owned by Respondents including a description of each item of Personal Property and its most recent appraised valuation.

24) List of household furnishings and fixtures that have been purchased within the last three years that had a purchase price of $999.00 or more.

25) List and valuation of all collectibles (i.e. stamps, coins, sports cards, etc.) that the Respondent now owns or has owned within the past three years.

26) Any and all note receivables, pledges, or security interest in favor of the Respondents now, and in the past three years.

27) Copies of all homeowner's insurance policies and any other insurance policies or riders that have insured any property that the Respondent own or has the benefit of us of, for the past three years.

28) Any and all documents that refer to or reflect any livestock owned by the Respondents within the past three years.

29) Any and all documents evidencing any interest the Respondents may have in any patents, trademarks, copyrights, franchises, royalties of any kind, oil and gas rights, timber rights, or mineral rights.

30) All documents that identify the name and addresses of any person or entity that has employed the Respondents within the past three years.

31) All documents that identify any person or entity that the Respondents have acted as an independent contractor for the past three years.

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32) All documents referring in any way, directly or indirectly, to any and all businesses in which the Respondents are a stockholder, partner, member, officer, director, owner, or registered agent and a description of Respondents' interest in such businesses.

33) Any and all corporate charters, minutes of stockholder meetings, resolutions, or recorded evidence of any kind relating to the affairs of any corporation or business entity owned by the Respondents, or any subsidiary or other entity in which such corporation or business entity holds an ownership interest during the past three years.

34) Lists of all customers, clients, etc. of any kind with which the corporations or other business entities owned by the Respondents are doing business or have done business during the past three years.

35) All documents referring, relating, or pertaining to any records of salaries, commissions, bonuses, income from employment, wages, pay stubs, dividends, royalties, allowances, expenses, or other sums of money paid to the Respondents within the past three years.

36) Any and all employment contracts that the Respondents have had in the past three years.

37) Any and all documents and records of stocks, bonds, mutual funds, debentures, certificates of deposit or any other investment vehicle owned or held for the benefit of the Respondents.

38) Any and all documents relating to retirement accounts or annuities, whether individual or employer sponsored, that are owned by the Respondents, or held for the benefit of the Respondents.

39) Any and all rent rolls for all properties in which the Respondents have had an ownership interest in for the past three years.

40) Copies of all 1099'D's or 1099'I's issued to the Respondents within the past three years.

41) Any and all documents referring to any stock options or profit-sharing plans held by the Respondents or for the benefit of the Respondents.

42) All documents evidencing any trusts, whether domestic or foreign, or amendments to such trusts in which the Respondents are a grantor, settlor, trustee, beneficiary, or otherwise an interested party.

43) Any and all books, recorded documents, or writings concerning the financial status of Respondents not herein before specified.

44) Any tax receipts, tax returns, tax supplement forms, and any and all other documents, forms, or letters filed with the United States Internal Revenue Service, or the South Carolina Tax Commission, including all attachments, schedules, W-2's, K-1's, 1099 and 1098 forms, or the tax authority of any other state within the last three years.

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45) Copies of all pre and post-nuptial agreements, to include the list of assets and liabilities to be held separately.

46) Copies of any and all divorce decrees and any affidavits submitted in those proceedings.

47) Copies of all separate property agreements, to include the list of assets and liabilities to be held separate.

48) Copies of any Wills including all amendments in which the Respondents are or was named as beneficiary.

49) Copies of any and all credit card statements, for all cards in which the Respondents are an authorized user, for the past three years.

50) All documents referring or reflecting the name and address of any storage facility or mini warehouse to which the Respondents have access.

51) Copies of any and all professional licenses that are held by the Respondents.

WHEREFORE, Petitioner prays this Court for the following relief:

A. The Court issue it's Orders and Rules to Show Cause directing the Respondent to:

(1) Appear for the purpose of being examined under oath, concerning the assets and property of the Respondent, before the Honorable Alan D. Clemmons, Master-in-Equity for Horry County.

(2) Provide Petitioner's counsel, Kevin N. Molony, located at 210 Newberry St. NW, Aiken, SC 29801, with the information listed in paragraph 7, *supra*, within fifteen (15) days of the date of service hereof;

B. The Court appoint a receiver for the assets of Respondents for the purposes of applying such assets to the satisfaction of Petitioner's Judgment;

C. The Court issue its Order enjoining Respondents from transferring, selling, alienating, liquidating, or otherwise encumbering their distributional interest in **all business associations, including but not limited to those listed in Paragraph 5, *supra***;

D. The Court issue its Order enjoining the Respondents from transferring, spending, alienating, loaning, liquidating, or otherwise encumbering **any of their non-exempt personal property, including but not limited to the motor vehicles listed in Paragraph 6, *supra***;

E. The Court award Petitioner's attorney fees, costs for these proceedings, and compensation for any receiver the Court appoints; and

F. For such other and further relief as the Court may deem just and proper.

065

Respectfully Submitted by:

s/Kevin N. Molony
SC Bar No: 80679
Angell Molony, LLC
210 Newberry St. NW
Aiken, SC 29801
P: 803.335.1449
F: 803.335.5422
LUKE@ANGELLMOLONY.COM

June 7, 2023

Aiken County, South Carolina

ELECTRONICALLY FILED - 2023 Jun 07 3:08 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

066

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO. 2016-CP-26-06056
RHH Land Investors, LLC,)	
)	
Plaintiff,)	
)	
vs.)	MOTION TO SET ASIDE DEFAULT
)	AND MOTION TO STAY
Leonard Ray Watts,)	SUPPLEMENTAL PROCEEDINGS
SAGO Plantation II Development,)	AND ENFORCEMENT OF JUDGMENT
Inc., Plantation at Colonial Charters,)	
LLC,)	
Defendants.)	
)	

COMES NOW, Defendant, Leonard Ray Watts, individually, hereinafter referred to as " "Defendant", by and through his undersigned attorney, and hereby moves this Honorable Court for an Order Setting Aside the Order of Default against Leonard Ray Watts. In addition, the Defendant hereby moves this Honorable Court to Stay the Supplemental Proceedings and/or Enforcement of the Judgment until the Motion to Set Aside Default has been decided.

Defendant moves pursuant to Rule 55(c) and Rule 60(b)(3) of the South Carolina Rules of Civil Procedure which allows this Honorable Court to set aside an entry of default for good cause shown. Furthermore, the Order of Default should be set aside because of "fraud, misrepresentation, or other misconduct of an adverse party". Likewise, Defendant requests an Order Staying the Supplemental Proceedings and Enforcement of Judgment until this Motion to Set Aside Default has been heard and decided. Defendant filed an Answer on December 20, 2016, a copy of which is attached hereto as Exhibit "A". Plaintiff and/or Counsel for Plaintiff misrepresented and/or failed to acknowledge and/or disclose to this Honorable Court Defendant's Answer in Plaintiff's Affidavit of Default filed on February 28, 2017, a copy of which is attached hereto as Exhibit "B".

067

The controlling law and additional facts supporting this Motion will be presented in more detail to this Honorable Court and the Plaintiff through a supporting memorandum, which will be submitted under separate filing.

[SIGNATURE PAGE TO FOLLOW]

This 11th day of August, 2023.

Respectfully submitted,

Biddle Law Firm, LLC

s/James Marshall Biddle
James Marshall Biddle, SC Bar No. 69471
Biddle Law Firm, LLC
Post Office Box 1119 (29528)
913 Third Avenue
Conway, SC 29526
843-903-1600
marshall@biddlelawfirm.net

Attorney for Leonard Ray Watts

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

068

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

RUTH LAND INVESTORS, LLC AKA
DBA RUTH LAND INVESTMENTS INC
C/O REGISTER AGENT LLC PLAINTIFF)
622 JOHNNIE DODDS BLVD
STREET ADDRESS)
MT. PLEASANT, SC 29464
CITY, STATE ZIP)
#843.849.6000
TELEPHONE)

VS.

LEONARD WATTS
DEFENDANT(S)
21333 CATAWBA AVE
STREET ADDRESS)
CORNELIUS NC 28031
CITY, STATE ZIP)
#704.622.8866
TELEPHONE)

CIVIL CASE NUMBER
2016-CP-26-6056
IN THE ~~MAGISTRATE'S~~ COURT
OF COMMON PLEAS

ANSWER

2016 DEC 20 PM 4:49

On ABOUT UNKNOWN was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the AS EXTENDED ~~Magistrate~~ COMMON PLEAS Court, is as follows:

CHECK ONE:

A. ☐ I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. ☐ I admit everything in the complaint and do not want a trial.

C. ☐ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary)

D. ☑ I deny that I am responsible at all because: (use additional pages if necessary)
TERMS OF CONTRACT AND TRANSFER OF SOLD AND/OR PROPERTY PERFORMED AS AGREED COUNTER CLAIMS PAINT CAMERA VIA ATTORNEY.

You must file this document with the Court within thirty days.

THE DEFENDANT STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE.

Dated: 20 DEC 16

Signature of Defendant (or his attorney)

KEEP A COPY OF THIS ANSWER AND BRING IT TO COURT

SCCA/703 (Amended 08/2009)

069

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	CASE NO.: 2016-CP-26-6056
RHH LAND INVESTORS, LLC also d/b/a RHH LAND INVESTMENTS, LLC PLAINTIFF	)	
VS.	)	Affidavit of Default
LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC, and SAGO PLANTATION II DEVELOPMENT, INC. DEFENDANTS	)	

2017 FEB 28 PM 12:17

PERSONALLY appeared before me, Aaron E. Edwards of The Richter Firm, LLC, who being duly sworn, deposes and says as follows:

1. I am the attorney representing the plaintiff in the above captioned matter.
2. The Summons and Complaint in the above captioned matter were personally served on the Defendant, Leonard R. Watts, on October 29, 2016. (Exhibit A).
3. More than thirty (30) days, exclusive of the day of service, have elapsed since service, and no answer, demurrer, or notice of appearance has been served upon Plaintiff or their attorneys, by or on behalf of Defendant Watts.
4. Defendant Watts is now in default and the clerk is requested to enter his default upon the calendar (file book).
5. Defendant The Plantation at Colonial Charters, LLC was served via its Registered Agent, James Marshall Biddle, on October 4, 2016. (Exhibit B).

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

070

6. Defendant The Plantation at Colonial Charters, LLC was thereafter served via Defendant Watts on October 29, 2016 (Exhibit C).

7. More than thirty (30) days, exclusive of the day of service, have elapsed since the service, and no answer, demurrer, or notice of appearance has been served upon the Plaintiffs or their attorneys, by or on behalf of Defendant The Plantation at Colonial Charters, LLC.

8. The Defendant, The Plantation at Colonial Charters, LLC, is now in default and the clerk is requested to enter his default upon the calendar (file book).

9. Defendant Sago Plantation II Development, Inc. was served via its Registered Agent, James Marshall Biddle, on October 4, 2016 (Exhibit D).

10. Defendant Sago Plantation II Development, Inc. was thereafter served via Defendant Watts on October 29, 2016 (Exhibit E).

11. More than thirty (30) days, exclusive of the day of service, have elapsed since the service, and no answer, demurrer, or notice of appearance has been served upon the Plaintiffs or their attorneys, by or on behalf of Defendant Sago Plantation II Development, Inc.

12. The Defendant, Sago Plantation II Development, Inc., is now in default and the clerk is requested to enter his default upon the calendar (file book).

THE RICHTER FIRM, LLC

By: _____

Lawrence E. Richter, Jr.
Aaron E. Edwards
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
P: (843) 849-6000

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

071

F: (843) 881-1400

Attorney for the Plaintiffs

SWORN to before me this

24 day of February, 2017

Sarah W. Hyler

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: April 5, 2020

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

072

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

AFFIDAVIT OF SERVICE

State of South Carolina | County of Horry | Common Pleas Court

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **Leonard R. Watts, 19411 Schooner Drive, Cornelius, NC 28031.** I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct, 2016 at 9:40A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served the within-named person.

( ) SUBSTITUTE SERVICE: By serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below.

Military Status: ( ) Yes or ( ) No If yes, what branch? _____

COMMENTS: _____

FILED
2016 OCT 11 AM 11:54

Age 55 Sex (M) F Race White Height 6'1" Weight 220 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2016001821

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COPY

EXHIBIT A

073

Myrtle Beach Process Server, LLC

STATE OF SOUTH CAROLINA,)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF SERVICE

RHH Land Investors, LLC
also d/b/a RHH Land Investments, LLC)
Plaintiff(s)
vs.
Leonard R Watts;
The Plantation at Colonial Charters, LLC;
and Sago Plantation II Development, Inc

15TH JUDICIAL CIRCUIT

FILE NO: **2016-CP-26-6056**

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the **Civil Action Coversheet; Summons; Complaint** in this action

(Describe document(s) served)

on **The Plantation at Colonial Charters, LLC** by delivery to

☐ _____ personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

☒ **James Marshall Biddle** (Name of person served) the **Registered Agent** (Title) of **The Plantation at Colonial Charters, LLC** (Name of corporate party served)

and leaving with ☒(him) ☐(her) a copy at **142 University Drive** (home)
(Street address)

in **Conway** (City or Town) **Horry** County, South Carolina,

on **October 4, 2016** at **8:14** o'clock **AM**

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

2016 OCT 31 PM 2:07
THE HUGGINS LAW FIRM
CLERK OF COURT

Sworn to and Subscribed before me
this 25th day of **October**, **2016**

Notary Public for South Carolina
My Commission expires 11/13/26

John Millen
Process Server
Post Office Box 2114, Myrtle Beach SC 29578

SCCA 402 (5/02)

EXHIBIT B

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

074

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

AFFIDAVIT OF SERVICE

State of South Carolina | County of Horry | Common Pleas Court

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC
AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **The Plantation At Colonial Charters, LLC Leonard R Watts as Registered Agent, 19411 Schooner Drive, Cornelius, NC 28031**. I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct., 20 16 at 9:40 A m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Leonard Watts as Registered Agent.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below

COMMENTS: _____

Age 55 Sex (M) F Race White Height 6'1" Weight 220 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October, 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2016001822

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EXHIBIT C

075

Myrtle Beach Process Server, LLC

STATE OF SOUTH CAROLINA,)
COUNTY OF Horry)
)
RHH Land Investors, LLC)
also d/b/a RHH Land Investments, LLC) 15TH JUDICIAL CIRCUIT
Plaintiff(s))
vs.)
Leonard R Watts;)
The Plantation at Colonial Charters, LLC;)
and Sago Plantation II Development, Inc) FILE NO: 2016-CP-26-6056

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF SERVICE

2016 OCT 3 PM 2:07
CLERK OF COURT

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the **Civil Action Coversheet; Summons; Complaint** in this action
(Describe document(s) served)

on **Sago Plantation II Development, Inc** by delivery to

☐ _____ personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

☒ **James Marshall Biddle** (Name of person served) the **Registered Agent** (Title) of **Sago Plantation II Development, Inc** (Name of corporate party served)

and leaving with ☒(him) ☐(her) a copy at **142 University Drive** (home)
(Street address)

in **Conway** (City or Town) **Horry** County, South Carolina,

on **October 4, 2016** at **3:14** o'clock **AM**

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed before me
this 25th day of October, 2016

Becky J. Adams
Notary Public for South Carolina
My Commission expires 1/13/26

John Millen
John Millen
Process Server
Post Office Box 2114, Myrtle Beach SC 29578

SCCA 402 (5/02)

EXHIBIT D

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

AFFIDAVIT OF SERVICE

State of South Carolina | County of Horry | Common Pleas Court

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC
AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **Sago Plantation II Development, Inc Leonard R Watts as Registered Agent, 19411 Schooner Drive, Cornelius, NC 28031.** I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct., 2016 at 9:40 A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Leonard Watts as Registered Agent.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____

( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: _____

Age 55 Sex (M) F Race White Height 6'1" Weight 320 Hair Bloom Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October, 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires. 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

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(843) 577-9696

Our Job Serial Number: 2016001823

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EXHIBIT E

077

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	CASE NO.: 2016-CP-26-6056
RHH LAND INVESTORS, LLC also d/b/a RHH LAND INVESTMENTS, LLC	)	
PLAINTIFF	)	
VS.	)	
LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC, and SAGO PLANTATION II DEVELOPMENT, INC.	)	
DEFENDANTS	)	

2017 FEB 28 PM 12:17

CERTIFICATE OF SERVICE

I DO HEREBY certify that on this date I have served the Affidavit of Default by mailing a true and correct copy of the same via U.S. Mail to Defendants at the address indicated as follows:

Leonard Ray Watts
19411 Schooner Drive
Cornelius, NC 28031

James Marshall Biddle
142 University Dr.
Conway, SC 29526
Registered agent for Sago Plantation II Development, Inc. and The Plantation at Colonial Charters, LLC

Michelle Stith

February 24, 2017
Mt. Pleasant, South Carolina

ELECTRONICALLY FILED - 2023 Aug 11 4:20 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

078

ELECTRONICALLY FILED - 2023 Sep 16 4:16 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2015-CP-26-01729
SUMMIT SHORES LENDER, LLC,)) PLAINTIFF,)) VS.)) PALMETTO INTERSTATE) DEVELOPMENT II, INC., AND) LEONARD RAY WATTS,)) DEFENDANTS.))	MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT

COMES NOW, Defendant, Leonard Ray Watts, individually, hereinafter referred to as "Defendant", by and through his undersigned attorney, in Support of the Motion to Set Aside Default Judgment against Leonard Ray Watts. Plaintiff filed an action for breach of contract among other related causes of action on or about September 13, 2016. The Complaint was served upon Defendant Leonard Ray Watts on or about October 29, 2016. The allegation that has arisen in this matter is that Plaintiff has alleged that Defendant has failed to "serve" an Answer to the original complaint, as required by Rule 8(c), of the South Carolina Rules of Civil Procedure "SCRCP". See Rule 12(a), SCRCP.

Defendant was served on or about October 29, 2016 and, if a close examination of the Clerk of Court's file were made, it could be discovered that an Answer was submitted and filed with the Clerk's Office on or about December 20, 2016. The default judgment, that was purportedly submitted was sought as a means to rectify the purported failure to comply with the time limits set forth in Rule 12(a), SCRCP, "A defendant shall serve his answer within thirty (30) days after the service of the complaint upon him ..." In this present action, the issue presented before this Court is that Defendant filed his answer approximately fifty (52) days our of time.

079

ELECTRONICALLY FILED - 2023 Sep 16 4:16 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

Defendant did not have an attorney and was forced to attempt to "push forward" to the best of his ability, and he used an Answer Form that was designed for the Magistrate's Court. Defendant was attempting to assert his rights to protect his interests by filing an answer "pro se" in the best manner he could until such time as he could locate an attorney to assist him with defending the allegations brought by the Plaintiff. Defendant filed the answer upon the belief that he was placing a notice requirement in the record and that the Plaintiff, at a minimum, or the Court would reach out to him prior to any further actions being taken that might affect his rights regarding the lawsuit. Defendant never received any notice of the Motion for Default proceedings. This, in an of itself, is a deprivation of rights that seriously undermines the most basic of procedural due process rights. See Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 642 S.E.2d 567 (2007) (the elements of due process are: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to cross-examine and confront witnesses.; Ogburn-Matthews v. Ricefield Plantations, 332 S.C. 551, 505 S.E.2d 598 (Ct. App. 1998) (procedural due process); SC DSS on behalf of Texas v. Holden, 319 S.C.72, 459 S.E.2d 846 (1995). First and foremost, the deliberate and invidious discriminatory act of not providing notice, is in and of itself, sufficient to reverse and rescind the original order granted in default proceedings.

Yet, due to the unique circumstances and presentation in which Plaintiff's counsel has approached, argued, and offered sworn affidavits as to critical and crucial events, this raises concerns relating to an "officer of the court" presenting "fraud upon the court" to gain an unfair advantage and to keep Defendant from having "his full day in court", applying all his claims in this matter.

An affidavit differs from an oath in that an "affidavit" consists of statement of facts which is sworn to as true while an "oath" is a pledge. State v. Dunbar, 361 S.C. 240, 603 S.E.2d 615 (Ct.

080

ELECTRONICALLY FILED - 2023 Sep 16 4:16 PM - HORRY - COMMON PLEAS - CASE#2016CP260056

App. 2004). An "oath" is a solemn pledge, swearing to a higher power that one's statement is true and subjects one to penalties for perjury if the statement is false. See Black's Law Dictionary 1099 (7th Ed. 1999). An "affirmation" is a pledge that one's statement is true and subjects the person to the penalties for perjury but does not require the swearing to a higher power. Black's Law Dictionary 59. Rule 603 of the South Carolina Rules of Evidence: Oath or Affirmation, "Before testifying every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so. Rule 43(d), SCRCP, ("whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof"). Furthermore, a witness or affiant must take an oath or affirmation to testify. An "Affidavit" is sworn testimony to be used in a proceeding as evidence. Rule 43(e), SCRCP, ("When a motion is based on fact not appearing of record, the court may hear the matter on affidavits presented by the respective parties..."); 98 C.J.S. Witnesses, §320(a)(957).

The facts relevant to this matter were committed by one charged as an "officer of the court". This allegation is based upon Plaintiff's counsel of record. As provided for by Rule 11(a), SCRCP, entitled: Affidavits and Verification, provides in pertinent part: "Affidavits or Verifications authorized or permitted under these Rules shall be written statements or declarations by ... his attorney ... sworn to ... that the affiant knows the facts stated to be true of his own knowledge, expect as those matters stated on information and belief and as to these matters that he believes them to be true." The execution of the affidavit carries a heavy burden with it, especially where is related to an authorized attorney, who must be mindful that he "has read the pleadings, motion or other paper" ... this other paper being the affidavit in question, "constitutes a certificate by him"

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ELECTRONICALLY FILED - 2023 Sep 16 4:16 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

that the purported facts therein are [true] and substantially support the claims and position within. Rule 11(a), SCRCP; Rule 43(d), SCRCP.

Taking into consideration that this Defendant is asking the Court to evaluate the circumstances involving direct fraudulent facts, Defendant is of the position that, Plaintiff's counsel has attempted to and did, in fact, deceive this Court by presenting an affidavit and its purported validity in seeking a default judgment on or about February 28, 2017 followed by a Motion for Damages Hearing and Default Judgment filed on or about May 25, 2017 wherein the Plaintiff's counsel repeated the misrepresentation to the Court that the Defendant, Leonard Ray Watts, failed to "serve" his Answer. Defendant, Leonard Ray Watts, also never received notice of this motion for damages hearing and judgment by default from Plaintiff's counsel.

Under Rule 55(c), SCRCP, which provides: "[t}he court may set aside an entry of default for good cause shown, and it may set aside a final default judgment under Rule 60(b)." Rule 60(b), SCRCP, provides that "[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for five (5) reasons." The primary grounds for relief being "mistake, inadvertence, surprise, or excusable neglect". "Where defaults and judgments thereon are at issue, Rule 60(b) must be read with due regard for Rule 55(c). Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp., 843 F.2d 808, 810 (4th Cir. 1987). To obtain relief from a judgment under Rule 60(b), a moving party must show that his motion is timely, that he has a meritorious defense to the action, and that the opposing party would not be prejudiced by having the judgment set aside. Park Corp. v. Lexington Ins. Co., 912 F.2d 894, 896 (4th Cir. 1988). "If the moving party makes such a showing, he must then satisfy one or more of the ... grounds for relief set forth in Rule 60(b) in order to obtain relief from the judgment." Therapia Staffing, Inc. v. Quality Business Solutions, LLC, 2022 WL 4181106. Defendant,

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Leonard Ray Watts, alleges that he is due relief pursuant to Rule 60(b)(1) and (3), SCRCP. Defendant's main argument is to set aside the default judgment because of "fraud, misrepresentation, or other misconduct of an adverse party". The South Carolina Supreme Court set forth the requirements for "fraud upon the court". See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2000) Further, in Evans v. Gunter, 294 S.C. 5254, 529, 366 S.E.2d 44, 46 (Ct. App. 1988), one commentator for the Court of Appeals described "fraud upon the court' as "that species of fraud which does, or attempts to, subvert the integrity of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Citing H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 2d ed. 1985).

Other jurisdictions have described fraud upon the court as "Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrications of evidence by a party in which an attorney is implicated with constitute fraud upon the court." Rozier v. Ford Motor Co., 523 F.2d 1332, 1338 (5th Cir. 1978), citing United States v. Int'l Telephone & Telegraph Corp., 349 F.Supp. 22, 29 (D. Conn. 1972). "Fraud upon the court", whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests of finality on the one hand and allowing reliance due to inequitable conduct on the other makes it essential that there be a showing of conscious wrongdoing – before relief from a final judgment is appropriate." United States v. Buck, 281 F.3d 1336, 1342 (10th Cir. 2002).

Hazel-Glass Co. v. Hartford – Empire Co., 322 U.S. 238, 64 S.Ct. 997 (1944) is the United States Supreme Court's (USSC) leading case on "fraud upon the courts". An attorney for Hartford drafted an article in support of a particular glass manufacturing process, had an officer of the glass

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worker's union sign the article as its author, and then had it published in a trade journal. This article was in support of Hartford's controversial patent application. The patent was granted. Hartford then initiated a patent infringement lawsuit against Hazel-Glass. In finding that Hazel-Glass had infringed upon Hartford's Patent, the Third Circuit Court of Appeal relied upon the article. Ultimately, the true identity of the author was discovered. In upholding the Hazel-Glass' sit, the US Supreme Court emphasized: "This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed to have been guilty of perjury. Here...we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals ... This matter does not concern only the private parties. There are issues of great moment to the public in patent suits. Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institution set up to protect and safeguard public institutions which fraud cannot complacently be tolerated consistently with the good order of society. Surely, it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public justice be not so important that they must always be mute and helpless victims of deception and fraud." Id., U.S. at 245-246. 64 S.Ct. 997.

In considering collateral attacks on judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute. Hagy v. Pruitt, 334 S.C. 425, 529 S.E.2d 714 (2000).

Extrinsic fraud is "fraud" that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that it is because the fraud prevents a party from fully exhibiting and/or trying his case.

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In this matter, the Court simply relies upon the facts and circumstances related to the history of this case. The facts are: a complaint was filed on or about September 13, 2016. A copy was filed and/or served upon the Defendant, Leonard Ray Watts, on or about October 29, 2016. As the file in the Clerk's office demonstrates, Defendant "filed" an Answer on or about December 20, 2016. When Plaintiff's counsel, on February 28, 2017, moved for a default judgment, Plaintiff's counsel falsely and fraudulently testified in the form of an affidavit of default that the Defendant "has failed to serve" an answer to the Complaint. This may be true, but it is not the whole truth. Plaintiff's counsel deceivingly drafted the affidavit of default as to Defendant Leonard Ray Watts stating that an answer "has not been served" but as to the other Defendants, Plaintiff's counsel stated that Defendant "has not filed or served" an Answer upon the Plaintiff. Plaintiff's counsel knew, without a doubt, that Defendant, Leonard Ray Watts, had "filed" an Answer to the Complaint but failed to provide that information to the Court. Plaintiff's counsel simply manipulated the wording in the affidavit of default and in the motion for damages hearing and judgment by default by failing to provide the truth. While what Plaintiff's counsel provided in his affidavit of default may be "**truth**", it is not **the truth, the whole truth** and **nothing but the truth**! The affidavit of default provided by Plaintiff's counsel was false, misleading and fraudulent. He deliberately and maliciously demonstrated a "fraud" upon the court by failing to provide the whole truth and nothing but the truth to the Judge and the Court. This fraud became a reality and legal conclusion, unfairly and unjustly depriving Defendant, Leonard Ray Watts, of his ability to be heard and present defenses and evidence to refute the Plaintiff's allegations. The Court took the misrepresented facts and reached a judicial conclusion based solely upon a "fraud upon the court" committed by an officer of the court.

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Defendant's position is that the economic gains that would be provided by the judgment was the enticement that these claims rest upon; especially where Defendant was completely without counsel. This caused several complications for the Defendant with the inability in which to maneuver the obstacles that the Rules of Court present in certain instances. Gamble v. State, 298 S.C. 276, 379 S.E.2d 118 (1989) (stating rules applicable to post-conviction relief actions should not be construed in a manner which operate as a trap for the unwary or deprive an application of the adjudication on the merits of his original petition"); Elam v. S.C. Dep't. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). Also, the subordination of perjury by an attorney ... are actions which constitute extrinsic fraud. Contrary to perjury by a witness, or a party's failure to disclose requested materials, (conduct that constitutes intrinsic fraud), where an attorney – an officer of the court – suborns perjury ... constitutes a preclusion of this Defendant's ability to have his day in court. In Matter of Goodwin, 279 S.C. 274, 305 S.E.2d. 578 (1983) (attorney has an ethical duty not to perpetuate a fraud upon the court by knowingly presenting perjured testimony); In Matter of Elliott, 268 S.C. 522, 235 S.E.2d 111 (1977) (the filing of an application for acceptance for the practice of law, where the responses were fraudulent and perjurious); Great Coastal Express, Inc. v. Int'l Brotherhood of Teamsters, 675 F.2d. 1349, 1357 (4th Cir. 1982) ([I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury ... constitutes fraud upon the court); H.K. Porter Co. v. Goodyear Tire & Rubber, 536 F.2d 1115, 1119 (6th Cir. 1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute a fraud upon the court"); Synanon Foundation, Inc. v. Bernstein, 503 A.2d 1254 (D.C. 1986); and 12 Moore et. al., Moore's Federal Practice ¶60-21[4][b] (3d. ed. 2002). Attorney fraud calls into question the integrity of the judiciary and erodes the public confidence in the fairness of our system of justice. Dixon v. Commission of Internal Revenue, 2003 WL 1216290 (9th Cir.

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2003) ("...the perpetrator of the fraud [upon the court] should not be allowed to dispute the effectiveness of the fraud after the fact").

CONCLUSION

In this matter, it is reasonable to allege that opposing counsel deliberately and maliciously, as a means to deceive, caused this Defendant to be refused his guaranteed rights associated with the notice and appearance at the default hearing. Such misconduct on the part of Plaintiff's Counsel to conceal the true fact that a default proceeding had been placed on the docket and utilized specific purported facts in an affidavit to further separate the Defendant from his procedural due process rights.

Defendant respectfully requests that this Court grant the relief of (1) vacating the Order of Default (2) Rescinding and Vacating the Resulting Default Judgment; and (3) finding that Plaintiff's counsel deliberately committed fraudulent acts upon the court, thereby defrauding this Court and subverting the integrity of the Court.

RESPECTFULLY SUBMITTED,

Biddle Law Firm, LLC

_s/James Marshall Biddle_____
James Marshall Biddle, SC Bar No. 6947
Biddle Law Firm, LLC
Post Office Box 1119 (29528)
913 Third Avenue Conway, SC 29526
843-903-1600
marshall@biddlelawfirm.net

Attorney for Leonard Ray Watts

September 16, 2023

ELECTRONICALLY FILED - 2023 Sep 16 4:16 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

087

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-26-06056
RHH Land Investors LLC, Plaintiff(s)	)	
VS.	)	AFFIDAVIT OF BRIDGETT WILLIAMSON
Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Defendant(s)	)	

PERSONALLY APPEARED before me the undersigned who, first being duly sworn, deposes and states as follows:

1. I am a resident of Horry County, South Carolina, am over eighteen (18) years of age, and make this Affidavit of my own personal knowledge and to the best of my recollection.

2. I am the Common Pleas Supervisor for the Horry County Clerk of Court, and have served in this capacity since 2013. As Common Pleas Supervisor, I am primarily responsible for the maintenance of all Common Pleas files.

3. From October, 2007 until I became the Supervisor, I was an Administrative Assistant in the Clerk of Court's Office.

4. On September 25, 2023, while reviewing the pleadings filed in this case in the Case Management System (CMS), it appears that the defendant, Leonard R. Watts, filed an Answer on December 20, 2016. When a Pro Se litigant files an Answer or other responsive pleading, it is the Clerk of Court's responsibility to enter that party as a Pro Se litigant in the Case Parties of CMS and enter their contact information. This procedure is to ensure all proper parties are notified of court hearings scheduled and to send copies of court orders filed. Upon further review of the file, the Clerk of Court's office inadvertently never entered Mr. Watts in the system as a Pro Se litigant nor his contact information.

5. A Motion for Damages Hearing and Judgment by Default was filed on May 25, 2017 by the Plaintiff's Attorney. This motion was scheduled on the Non-Jury Motions roster for the week of July 31, 2017. Notification of the hearing was sent out via email on June 28, 2017 to the Plaintiff's Attorney, Aaron E. Edwards. There was no notification of the hearing given to the defendant, Leonard R. Watts, by the Clerk's office due to the defendant not being entered in the CMS system properly.

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2003) ("...the perpetrator of the fraud [upon the court] should not be allowed to dispute the effectiveness of the fraud after the fact").

CONCLUSION

In this matter, it is reasonable to allege that opposing counsel deliberately and maliciously, as a means to deceive, caused this Defendant to be refused his guaranteed rights associated with the notice and appearance at the default hearing. Such misconduct on the part of Plaintiff's Counsel to conceal the true fact that a default proceeding had been placed on the docket and utilized specific purported facts in an affidavit to further separate the Defendant from his procedural due process rights.

Defendant respectfully requests that this Court grant the relief of (1) vacating the Order of Default (2) Rescinding and Vacating the Resulting Default Judgment; and (3) finding that Plaintiff's counsel deliberately committed fraudulent acts upon the court, thereby defrauding this Court and subverting the integrity of the Court.

RESPECTFULLY SUBMITTED,

Biddle Law Firm, LLC

_s/James Marshall Biddle_____
James Marshall Biddle, SC Bar No. 6947
Biddle Law Firm, LLC
Post Office Box 1119 (29528)
913 Third Avenue Conway, SC 29526
843-903-1600
marshall@biddlelawfirm.net

Attorney for Leonard Ray Watts

September 16, 2023

ELECTRONICALLY FILED - 2023 Sep 16 4:16 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

087

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-26-06056
RHH Land Investors LLC, Plaintiff(s)	)	
VS.	)	AFFIDAVIT OF BRIDGETT WILLIAMSON
Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Defendant(s)	)	

PERSONALLY APPEARED before me the undersigned who, first being duly sworn, deposes and states as follows:

1. I am a resident of Horry County, South Carolina, am over eighteen (18) years of age, and make this Affidavit of my own personal knowledge and to the best of my recollection.

2. I am the Common Pleas Supervisor for the Horry County Clerk of Court, and have served in this capacity since 2013. As Common Pleas Supervisor, I am primarily responsible for the maintenance of all Common Pleas files.

3. From October, 2007 until I became the Supervisor, I was an Administrative Assistant in the Clerk of Court's Office.

4. On September 25, 2023, while reviewing the pleadings filed in this case in the Case Management System (CMS), it appears that the defendant, Leonard R. Watts, filed an Answer on December 20, 2016. When a Pro Se litigant files an Answer or other responsive pleading, it is the Clerk of Court's responsibility to enter that party as a Pro Se litigant in the Case Parties of CMS and enter their contact information. This procedure is to ensure all proper parties are notified of court hearings scheduled and to send copies of court orders filed. Upon further review of the file, the Clerk of Court's office inadvertently never entered Mr. Watts in the system as a Pro Se litigant nor his contact information.

5. A Motion for Damages Hearing and Judgment by Default was filed on May 25, 2017 by the Plaintiff's Attorney. This motion was scheduled on the Non-Jury Motions roster for the week of July 31, 2017. Notification of the hearing was sent out via email on June 28, 2017 to the Plaintiff's Attorney, Aaron E. Edwards. There was no notification of the hearing given to the defendant, Leonard R. Watts, by the Clerk's office due to the defendant not being entered in the CMS system properly.

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6. An Order/Form 4 Granting the Plaintiff's Motion for Judgment by Default and Damages Hearing signed by the Honorable Benjamin H. Culbertson was filed on August 1, 2017. On Page 2 of the Order/Form 4, it states a copy of the judgment was mailed to the Plaintiff's Attorney, Aaron E. Edwards. A copy of the Order was not sent to the Defendant, Leonard R. Watts.

7. Based on my review of this file and based on my knowledge of the procedures and practice of the Clerk's office, it is my opinion that the Defendant Leonard R. Watts was not properly served notice of the motion hearing for the term of Non-Jury Court scheduled the week of July 31, 2017 and was not mailed a copy of the Order Granting Judgment by Default filed August 1, 2017, by the Clerk of Court's office.

IN WITNESS WHEREOF, I have set my hand and seal this 26th day of September, 2023.

Bridgett Williamson
BRIDGETT WILLIAMSON

SUBSCRIBED AND SWORN BEFORE ME,
a notary public in and for the State of South Carolina,
this 27th day of September, 2023.

Tara H. Turner

Printed Name: Tara H. Turner
Notary Public for South Carolina
My Commission Expires: 10-28-2024

ELECTRONICALLY FILED - 2023 Sep 27 10:39 AM - HORRY - COMMON PLEAS - CASE#2016CP260656

089

ELECTRONICALLY FILED - 2023 Sep 29 10:48 AM - HORRY - COMMON PLEAS - CASE#2016CP260656

STATE OF SOUTH CAROLINA COUNTY OF HORRY RHH Land Investors, LLC, Plaintiff, v. Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE 15TH JUDICIAL CIRCUIT Case No.: 2016-CP-26-06056 **NOTICE OF MOTION AND MOTION TO RECONSIDER ORDER DENYING MOTION TO SET ASIDE JUDGMENT AND MOTION TO STAY SUPPLEMENTAL PROCEEDINGS AND ENFORCE JUDGMENT**

PLEASE TAKE NOTICE THAT, the undersigned attorney for the Defendant, Leonard R. Watts, will move before the Special Referee and/or the Circuit Court Judge for the Horry County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as may be heard, for reconsideration of the Special Referee's Order Denying Motion to Set Aside Judgment and Motion to Stay Supplemental Proceedings and Enforcement of Judgment.

LAW

The South Carolina Supreme Court has held that a party must filed a Rule 59(e) motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review. *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). "A motion under Rule 59(e) long has been viewed as a 'motion for reconsideration' despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79 (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)). "There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a

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previously raised argument. It is inherently unfair to disallow such an opportunity." *Id.* at 22, 602 S.E.2d at 779.

The South Carolina Rules of Civil Procedure:

> contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Id. at 24, 602 S.E.2d at 780 (emphasis original)

ARGUMENT

This Motion is made pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure.* In support of this Motion to Reconsider, Defendant asserts as follows:

1. The Order provides in part, that "No evidence was submitted that Judge Culbertson...did not review the court file and determine that a Default Judgment being entered against the Defendant, Watts, was proper". However, the Affidavit of Bridgett Williamson, Horry County Clerk of Court Common Pleas Supervisor states that, "When a Pro Se litigant files an Answer or other responsive pleading, it is the Clerk of Court's responsibility to enter that party as a Pro Se litigant in the Case Parties of CMS and enter their contact information. This procedure is to ensure all proper parties are notified of court hearings scheduled and to send copies of court orders filed." She further states, "Upon further review of the file, the Clerk of Court's office inadvertently never entered Mr. Watts in the system as a Pro Se litigant nor his contact information." Moreover, the Motion hearing for Damages and Default Judgment "was scheduled on the Non-Jury Motions roster for the week of July 31, 2017." She further states, "There was no notification of the hearing given to the Defendant, Leonard R. Watts, by the Clerk's office due to the defendant not being entered in the CMS system properly." The Clerk of Court failed to provide the Defendant with Notice of the Motion for Damages Hearing and Judgment by Default scheduled during

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the week of July 31, 2017. Moreover, the Plaintiff failed to provide the Defendant with Notice of the Motion for Damages Hearing and Judgment by Default being scheduled during the week of July 31, 2017.

2. The Order/Form 4 Granting the Plaintiff's Motion for Judgment by Default and Damages Hearing was signed by the Honorable Benjamin H. Culbertson and was filed on August 1, 2017. The Affidavit of Bridgett Williams, Horry County Clerk of Court Common Pleas Supervisor states that, "A copy of the Order was not sent to the Defendant, Leonard R. Watts." Rule 77(d), *South Carolina Rules of Civil Procedure,* provides that "Immediately upon the entry of an order of judgment the clerk shall serve a notice of the entry by first class mail upon every party affected thereby..." She further states, "A copy of the Order was not sent to the Defendant, Leonard R. Watts." The Clerk of Court failed to provide a copy of the Order/Form 4 as required pursuant to Rule 77(d), *South Carolina Rules of Civil Procedure.* Moreover, the Plaintiff failed to provide a copy of the Order/Form 4 to the Defendant, Leonard R. Watts.

3. The argument was made that the Order/Form 4 was defective for failure to include the Pro Se litigant, Leonard R. Watts, as being served with a copy of the Order Granting Damages and Judgment by Default as he was excluded from the Order as a Pro Se litigant which required him to receive proper notice of the motion damages hearing and motion for default judgment and any resulting Order granting said motions. The Affidavit of Bridgett Williams, Horry County Clerk of Court Common Pleas Supervisor states that, "Based on my review of this file and based on my knowledge of the procedures and practices of the Clerk's office, it is my opinion that the Defendant Leonard R. Watts was not properly served notice of the motion hearing for the term of Non-Jury court scheduled the week of July 31, 2017 and was not mailed a copy of the Order Granting Judgment by Default filed August 1, 2017, by the Clerk of Court's office." The Plaintiff failed to provide a Notice of the hearing scheduled for the Week of July 31, 2017 and also failed to provide a copy of the Order/Form 4 signed by the Honorable Benjamin H. Culbertson to the Defendant, Leonard R. Watts.

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4. Defendant, Leonard R. Watts, did not receive notice of the Order/Form 4 until he was served on July 11, 2023. The package that was served included the Order/Form 4 Judgment signed, dated and filed August 1, 2017, an Execution to the Sheriff of Horry County signed, dated and filed May 16, 2023, a Return to the Clerk of Court from the Sheriff of Horry County signed, dated and filed May 30, 2023 and an Affidavit and Petition for Supplemental Proceedings signed, dated and filed on June 7, 2023 and served by Process Server upon Leonard R. Watts by delivery to his attorney on or about July 11, 2023.

CONCLUSION

Based on the foregoing, the Defendant, Leonard R. Watts, respectfully requests the Special Referee to reconsider its September 26, 2023 Order Denying Motion to Set Aside Judgment and Motion to Stay Supplemental Proceedings and Enforcement of Judgment and issue an Order Setting Aside the Judgment and Staying the Supplemental Proceedings and Enforcement of Judgment.

Respectfully submitted,

BIDDLE LAW FIRM, LLC

/s/James Marshall Biddle
James Marshall Biddle, SC Bar No. 69471
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marshall@biddlelawfirm.net
Attorney for Defendant Leonard R. Watts

Conway, South Carolina

September 28, 2023

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STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
	)	CASE NO. 2016-CP-26-06056
RHH Land Investors LLC, Plaintiff(s)	)	
VS.	)	AFFIDAVIT OF BRIDGETT WILLIAMSON
Leonard R. Watts, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., Defendant(s)	)	

PERSONALLY APPEARED before me the undersigned who, first being duly sworn, deposes and states as follows:

1. I am a resident of Horry County, South Carolina, am over eighteen (18) years of age, and make this Affidavit of my own personal knowledge and to the best of my recollection.

2. I am the Common Pleas Supervisor for the Horry County Clerk of Court, and have served in this capacity since 2013. As Common Pleas Supervisor, I am primarily responsible for the maintenance of all Common Pleas files.

3. From October, 2007 until I became the Supervisor, I was an Administrative Assistant in the Clerk of Court's Office.

4. On September 25, 2023, while reviewing the pleadings filed in this case in the Case Management System (CMS), it appears that the defendant, Leonard R. Watts, filed an Answer on December 20, 2016. When a Pro Se litigant files an Answer or other responsive pleading, it is the Clerk of Court's responsibility to enter that party as a Pro Se litigant in the Case Parties of CMS and enter their contact information. This procedure is to ensure all proper parties are notified of court hearings scheduled and to send copies of court orders filed. Upon further review of the file, the Clerk of Court's office inadvertently never entered Mr. Watts in the system as a Pro Se litigant nor his contact information.

5. A Motion for Damages Hearing and Judgment by Default was filed on May 25, 2017 by the Plaintiff's Attorney. This motion was scheduled on the Non-Jury Motions roster for the week of July 31, 2017. Notification of the hearing was sent out via email on June 28, 2017 to the Plaintiff's Attorney, Aaron E. Edwards. There was no notification of the hearing given to the defendant, Leonard R. Watts, by the Clerk's office due to the defendant not being entered in the CMS system properly.

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7. Based on my review of this file and based on my knowledge of the procedures and practice of the Clerk's office, it is my opinion that the Defendant Leonard R. Watts was not properly served notice of the motion hearing for the term of Non-Jury Court scheduled the week of July 31, 2017 and was not mailed a copy of the Order Granting Judgment by Default filed August 1, 2017, by the Clerk of Court's office.

IN WITNESS WHEREOF, I have set my hand and seal this 26th day of September, 2023.

Bridgett Williamson
BRIDGETT WILLIAMSON

SUBSCRIBED AND SWORN BEFORE ME,
a notary public in and for the State of South Carolina,
this 27th day of September, 2023.

Tara H. Turner

Printed Name: Tara H. Turner
Notary Public for South Carolina
My Commission Expires: 10-28-2024

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STATE OF SOUTH CAROLINA COUNTY OF HORRY RHH Land Investors, LLC, Plaintiff(s), v. Leonard R. Watts, The Plantation at Colonial Charters, LLC, and Sago Plantation II Development, Inc., Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT County C/A No.: 2017-CP-40-01795

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE DEFAULT AND MOTION TO STAY SUPPLEMENTAL PROCEEDINGS AND ENFORCEMENT OF JUDGMENT

Plaintiff RHH Land Investors, LLC (hereinafter the "Plaintiff") herein submits its Memorandum in Opposition to Defendant's Motion to Set Aside Default and Motion to Stay Supplemental Proceedings and Enforcement of Judgment filed August 11, 2023. For the reasons discussed below, Defendant Watts' motion should be denied.

Facts & Procedural Background

On September 13, 2016, Plaintiff filed a Summons and Complaint alleging causes of action for Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Conversion, Violation of the South Carolina Uniform Securities Act, and Negligence. Defendant Watts was personally served on October 29, 2016, as evinced by the Affidavit of Service filed November 14, 2016. (**Exhibit A**). Defendant Watts made a *pro se* filing, dated "20 DEC 16" and titled "Answer", on December 20, 2016[1]. (**Exhibit B**). On February 28, 2017, counsel for Plaintiff filed and served

[1] Watts used SCCA Form 703, a Magistrate's Court form Answer, in which he hand-wrote the caption, case number, and replaced "Magistrate" with "Common Pleas"

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an "Affidavit of Default" as to all defendants. (**Exhibit C**). On May 25, 2017, Plaintiff filed and served a "Motion for Damages Hearing and Judgment by Default" as to all defendants. (**Exhibit D**). A hearing on Plaintiff's motion was held August 1, 2017, following which, Judge Culbertson, granted Plaintiff's motion and entered a "joint and severable" Judgment against defendants. (**Exhibit E**).

LEGAL STANDARD

The Defendant has moved "pursuant to Rule 55(c) and Rule 60(b)(3) of the South Carolina Rules of Civil Procedure" to set aside entry of default and "the Order of Default." When interpreting a court rule, "we apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." *Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994).*

The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." *Rule 55(c), SCRCP.* "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc., 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." *Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989).*

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." *Rule 60(b),*

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SCRCP. "The petitioners are correct in stating that one year is the absolute time limit. *Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992).*

ARGUMENT

It is undisputed that Defendant Watts made his first and only pre-judgment filing in this matter fifty-two (52) days after being personally served with the Summons and Complaint. It is also undisputed that there is no evidence in the record showing that Defendant Watts served this, or any, document on Plaintiff, as required by Rule 5, SCRCP.

The contents and timing of Defendant Watts' filing are irrelevant as the document was never served as required by the Rules of Civil Procedure. Plaintiff's Affidavit of Default, the contents of which Defendant Watts seems to take issue with, clearly states that "no answer demurrer, or notice of appearance has been served upon Plaintiff or their attorneys, by or on behalf of Defendant Watts;" a fact supported by the record in this case. Plaintiff's Motion for Damages Hearing and Judgment by Default, filed May 25, 2017, similarly states that after service of the Summons and Complaint, Defendant Watts "has failed to serve an Answer on the Plaintiff." (**Exhibit D**). The description of Watts' procedural history should be compared with the language used regarding Defendants, The Plantation at Colonial Charters, LLC and Sago Plantation II Development, Inc., that they had "not **filed** or served an Answer on the Plaintiff." (**Exhibit D** emphasis added). Both descriptions are accurate representations, based on the filings in the record in this case, of the positions of the three defendants. Alleging that an accurate representation of the procedural history of a matter constitutes "fraud, misrepresentation, or other misconduct of an adverse party" that would justify the setting aside of judgment over six years later is ridiculous. To make such assertions would also imply that Judge Culbertson, prior to issuing the judgment

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following a noticed hearing, failed to review the filings made in the case, of which Defendant Watts' December 20, 2016 "Answer" was one.

I. Rule 55(c), SCRCP

Defendant moves pursuant to Rule 55(c), SCRCP, to set aside entry of default "for good cause shown." While rendered moot by the Default Judgment in this case, Defendant's motion fails to "provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).* Following an anticipated explanation for the default, the court must consider the factors outlined in *Wham* and its progeny. It is unreasonable that virtually any explanation for the default would be meritorious enough to justify a six-year, five month, and fourteen day (2,477 days) gap between the filing of Plaintiff's Affidavit of Default, the triggering event for entry of default, and Defendant Watt's motion for relief. Following the Affidavit of Default, Defendant Watts was also served with Plaintiff's Motion for Damages Hearing and Judgment by Default and a Notice of Motions Roster Publication, all before the Default Judgment was issued. Defendant Watts had ample time, opportunity. and notice to raise any issues and move to set aside the entry of default before judgment was issued. "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." *Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) (citing Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)).*

First, it appears as if the, purely ministerial, act of the clerk entering Defendant's default never actually took place as required by Rule 55(a), SCRCP. Regardless, "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which

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the clerk was required to perform once the default was made to appear by the affidavit" of the moving party. *Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct.App.1987).*

Second, Defendant Watts' December 20, 2016 filing fails to satisfy the requirements for an answer. Setting aside whether Defendant Watts' filing complied with the General Rules of Pleading contained in Rule 8, SCRCP, it does not meet the standards to be deemed an Answer. Unless an extension is granted, a defendant must **serve** his answer within thirty days "after the service of the complaint upon him." *Rule 12(a), SCRCP.* In the case at hand, there is no evidence in the record that Defendant Watts ever served his "Answer" on Plaintiff, at any time, and certainly not within thirty days. The filing which he claims to be his Answer was dated December 20, 2016, the same date as its filing, and twenty-two days late.

"Although Appellants' late answer amounted to a "pleading" filed prior to entry of default, it did not comply with the time requirements of Rule 12(a), SCRCP. Appellants clearly failed to file an answer within thirty days of service of the summons and complaint upon them and they were technically in default. Thus, Appellants' answer was not a valid pleading or defense "as provided by" the Rules of Civil Procedure. A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCP, meaningless." *Stark Truss Co. v. Superior Const. Corp., 360 S.C. 503, 602 S.E.2d 99 (S.C. App. 2004).*

Defendant's motion pursuant to Rule 55(c) should be denied.

II. Rule 60(b)(3), SCRCP

Defendant Watts moves pursuant to Rule 60(b)(3), SCRCP, for relief from judgment because of "fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b),

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SCRCP, states that "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." Given that the Judgment in this matter was entered August 1, 2017, over six years prior to this motion, Defendant Watts is time barred from pursuing relief under Rule 60(b)(3). "The rule clearly states that a motion under 60(b)(1)-(3) must be made within a reasonable time no later than one year from the original judgment." *Coleman v. Dunlap, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992).*

Further, as Defendant Watts was served with the Affidavit of Default, the Motion for Damages Hearing and Judgment by Default, and the Judgment itself, he was aware any alleged inaccuracies in Plaintiff's filings. "[A] party may not prevail on a Rule 60(b)(3) motion on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations at the time of the alleged misconduct." *Raby Const., L.L.P. v. Orr, 358 S.C. 10, 21, 594 S.E.2d 478, 484 (2004).* If he believed that there were inaccuracies with Plaintiff's filing, they could have been raised at any time prior to the judgment being issued and must have been raised in the time prescribed by South Carolina Rules of Civil Procedure. "[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." "It is always a matter of regret that a party should not have his day in court. However, ... [where] the appellant was duly served with the summons and complaint, [i]t was his duty to answer the complaint. ... [Therefore,] [h]e must suffer the consequence of his failure to answer." *Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001).*

Defendant's motion pursuant to Rule 60(b)(3) should be denied.

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CONCLUSION

Defendant Watts is not entitled to any of the relief he has requested. Despite being served with pleadings and notices at every step of this matter, he has consistently either failed to reply outright, or failed to reply in a manner consistent with the rules. The filing of the motion, considering such clearly defined rules, is a waste of the court's resources as well as the Plaintiff's. Defendant's motion should be denied, and this court should decline to issue any requested Order Staying the Supplemental Proceedings and Enforcement of Judgment. As Defendant Watts filed his motion with little, if any, supporting facts and law, the Plaintiff reserves its right to amend this memorandum, or otherwise reply, to any document filed by Defendant Watts in support of his motion.

Respectfully submitted,

s/ Jonathan D. Waller
Jonathan D. Waller, Esquire
SC Bar No.: 76290
Angell Molony, LLC
210 Newberry Street NW
Aiken, SC 29801
803-335-1449

Aiken, South Carolina
Dated: August 21, 2023

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Horry** **Common Pleas Court**

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **Leonard R. Watts, 19411 Schooner Drive, Cornelius, NC 28031**. I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct., 2016 at 9:40A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served the within-named person.

( ) SUBSTITUTE SERVICE: By serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below.

Military Status: ( ) Yes or ( ) No If yes, what branch? _____

2016 NOV 14 AM 11:54

COMMENTS: _____

Age 55 Sex (M) F Race White Height 6'1" Weight 220 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2016001821

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

CIVIL CASE NUMBER
2016-CP-26-6056
IN THE ~~MAGISTRATE'S~~ COURT
OF COMMON PLEAS

12th LAND INVESTORS, LLC ALSO DBA 12th LAND INVESTMENTS INC
c/o FLETCHER FIRM LLC PLAINTIFF)
622 TOURNAMENT DOWNS BLVD
STREET ADDRESS)
MT. PLEASANT, SC 29464
CITY, STATE ZIP)
#843.849.6000
TELEPHONE)

VS.

LEONIDAS WINNERS
DEFENDANT(S)
21333 CATAWBA AVE
STREET ADDRESS)
CORNELIUS NC 28031
CITY, STATE ZIP)
#704.622.8866
TELEPHONE)

ANSWER

2016 DEC 20 PM 4:49

On ABOUT UNKNOWN was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the HAS EXTENDED COMMON PLEAS ~~Magistrate~~ Court, is as follows:

CHECK ONE:

A. ☐ I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. ☐ I admit everything in the complaint and do not want a trial.

C. ☐ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary)

D. ☑ I deny that I am responsible at all because: (use additional pages if necessary)

TERMS OF CONTRACT AND TRANSFER OF STOCK AND/OR PROPERTY PERFORMED AS AGREED COURTESY CLAIMS FUNDS COMING VIA ATTORNEY.

You must file this document with the Court within thirty days.

THE DEFENDANT STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE.

Dated: 20 DEC 16

Signature of Defendant (or his attorney)

KEEP A COPY OF THIS ANSWER AND BRING IT TO COURT

SCCA/703 (Amended 08/2009)

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ELECTRONICALLY FILED - 2023 Aug 21 5:32 PM - HORRY - COMMON PLEAS - CASE#2016CP2606056

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CASE NO.: 2016-CP-26-6056
	)	
RHH LAND INVESTORS, LLC also d/b/a RHH LAND INVESTMENTS, LLC	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	Affidavit of Default
	)	
LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC, and SAGO PLANTATION II DEVELOPMENT, INC.	)	
	)	
DEFENDANTS	)	

2017 FEB 28 PM 12:17

PERSONALLY appeared before me, Aaron E. Edwards of The Richter Firm, LLC, who being duly sworn, deposes and says as follows:

1. I am the attorney representing the plaintiff in the above captioned matter.
2. The Summons and Complaint in the above captioned matter were personally served on the Defendant, Leonard R. Watts, on October 29, 2016. (Exhibit A).
3. More than thirty (30) days, exclusive of the day of service, have elapsed since service, and no answer, demurrer, or notice of appearance has been served upon Plaintiff or their attorneys, by or on behalf of Defendant Watts.
4. Defendant Watts is now in default and the clerk is requested to enter his default upon the calendar (file book).
5. Defendant The Plantation at Colonial Charters, LLC was served via its Registered Agent, James Marshall Biddle, on October 4, 2016. (Exhibit B).

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6. Defendant The Plantation at Colonial Charters, LLC was thereafter served via Defendant Watts on October 29, 2016 (Exhibit C).

7. More than thirty (30) days, exclusive of the day of service, have elapsed since the service, and no answer, demurrer, or notice of appearance has been served upon the Plaintiffs or their attorneys, by or on behalf of Defendant The Plantation at Colonial Charters, LLC.

8. The Defendant, The Plantation at Colonial Charters, LLC, is now in default and the clerk is requested to enter his default upon the calendar (file book).

9. Defendant Sago Plantation II Development, Inc. was served via its Registered Agent, James Marshall Biddle, on October 4, 2016 (Exhibit D).

10. Defendant Sago Plantation II Development, Inc. was thereafter served via Defendant Watts on October 29, 2016 (Exhibit E).

11. More than thirty (30) days, exclusive of the day of service, have elapsed since the service, and no answer, demurrer, or notice of appearance has been served upon the Plaintiffs or their attorneys, by or on behalf of Defendant Sago Plantation II Development, Inc.

12. The Defendant, Sago Plantation II Development, Inc., is now in default and the clerk is requested to enter his default upon the calendar (file book).

THE RICHTER FIRM, LLC

By: _____

Lawrence E. Richter, Jr.
Aaron E. Edwards
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
P: (843) 849-6000

106

F: (843) 881-1400

Attorney for the Plaintiffs

SWORN to before me this

24 day of February, 2017

Zarky W. Hyle

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: April 5, 2020

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AFFIDAVIT OF SERVICE

State of South Carolina | County of Horry | Common Pleas Court

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **Leonard R. Watts, 19411 Schooner Drive, Cornelius, NC 28031**. I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct., 2016 at 9:40A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) INDIVIDUAL SERVICE: Served the within-named person.

( ) SUBSTITUTE SERVICE: By serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below.

Military Status: ( ) Yes or ( ) No If yes, what branch? _____

COMMENTS: _____

2016 NOV 11 AM 11:54

Age 55 Sex (M) F Race White Height 6'1" Weight 220 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

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EXHIBIT A

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Myrtle Beach Process Server, LLC

STATE OF SOUTH CAROLINA,)
COUNTY OF Horry)
)
RHH Land Investors, LLC)
also d/b/a RHH Land Investments, LLC) 15TH JUDICIAL CIRCUIT
Plaintiff(s))
vs.)
Leonard R Watts;)
The Plantation at Colonial Charters, LLC;)
and Sago Plantation II Development, Inc) FILE NO: 2016-CP-26-6056

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF SERVICE

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the **Civil Action Coversheet; Summons; Complaint** in this action

(Describe document(s) served)

on **The Plantation at Colonial Charters, LLC** by delivery to

☐ _____ personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

☒ **James Marshall Biddle** the **Registered Agent** of **The Plantation at Colonial Charters, LLC**
(Name of person served) (Title) (Name of corporate party served)

and leaving with ☒(him) ☐(her) a copy at **142 University Drive** (home)
(Street address)

in **Conway** (City or Town) **Horry** County, South Carolina,

on **October 4, 2016** at **8:14** o'clock **AM**

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed before me
this 25th day of October, 2016

Becky J. Adams
Notary Public for South Carolina
My Commission expires 1/13/26

John Millen
John Millen
Process Server
Post Office Box 2114, Myrtle Beach SC 29578

SCCA 402 (5/02)

EXHIBIT B

2016 OCT 31 PM 2:07
HUGGINS W.C.
CLERK OF COURT

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AFFIDAVIT OF SERVICE

State of South Carolina | County of Horry | Common Pleas Court

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs.
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC ,
AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **The Plantation At Colonial Charters, LLC Leonard R Watts as Registered Agent, 19411 Schooner Drive, Cornelius, NC 28031**. I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct., 2016 at 9:50A m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE. By serving Leonard Watts as Registered Agent.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____.

( ) NON SERVICE: For the reason detailed in the Comments below

COMMENTS: _____

Age 55 Sex (M) F Race White Height 6'1" Weight 220 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October, 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires: 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2016001822

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EXHIBIT C

110

Myrtle Beach Process Server, LLC

STATE OF SOUTH CAROLINA,)
COUNTY OF Horry)
)
RHH Land Investors, LLC)
also d/b/a RHH Land Investments, LLC) Plaintiff(s)
vs.)
Leonard R Watts;)
The Plantation at Colonial Charters, LLC;)
and Sago Plantation II Development, Inc)

IN THE COURT OF COMMON PLEAS
AFFIDAVIT OF SERVICE

15TH JUDICIAL CIRCUIT

FILE NO: 2016-CP-26-6056

2016 OCT 31 PM 2:07
CLERK OF COURT

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn says that (s)he served the **Civil Action Coversheet; Summons; Complaint** in this action

(Describe document(s) served)

on **Sago Plantation II Development, Inc** by delivery to

☐ _____ personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

☒ **James Marshall Biddle** (Name of person served) the **Registered Agent** (Title) of **Sago Plantation II Development, Inc** (Name of corporate party served)

and leaving with ☒(him) ☐(her) a copy at **142 University Drive** (home)
(Street address)

in **Conway** (City or Town) **Horry** County, South Carolina,

on **October 4, 2016** at **3:14** o'clock **AM**

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Sworn to and Subscribed before me
this 25th day of **October**, **2016**

Becky J. Adams
Notary Public for South Carolina
My Commission expires 1/13/26

John Millen
John Millen
Process Server
Post Office Box 2114, Myrtle Beach SC 29578

SCCA 402 (5/02)

EXHIBIT D

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Horry** **Common Pleas Court**

Case Number: 2016-CP-26-6056

Plaintiff:
RHH LAND INVESTORS, LLC ALSO d/b/a RHH LAND INVESTMENTS, LLC
vs
Defendant:
LEONARD R WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC AND SAGO PLANTATION II DEVELEOPMENT, INC

For: The Richter Firm, LLC

Received by FALCON EXPRESS SERVICES, LLC to be served on **Sago Plantation II Deyelopment, Inc Leonard R Watts as Registered Agent, 19411 Schooner Drive, Cornelius, NC 28031.** I, Michael VanKeuren, being duly sworn, depose and say that on the 29 day of Oct, 2016 at 9:40A.m., executed service by delivering a true copy of the **CIVIL ACTION COVER SHEET, SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

(X) CORPORATE SERVICE: By serving Leonard Watts as Registered Agent.

( ) OTHER SERVICE: As described in the Comments below by serving _____ as _____

( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: _____

Age 55 Sex (M) F Race White Height 6'4" Weight 320 Hair Brown Glasses Y (N)

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Michael VanKeuren

Subscribed and Sworn to before me on the 31st day of October 2016 by the affiant who is personally known to me.

Raymont Jackson
NOTARY PUBLIC
My Commission Expires 12/16/2020

RAYMONT JACKSON NOTARY PUBLIC MECKLENBURG COUNTY, NC My Commission Expires 12-16-2020

PROCESS SERVER # N/A
Appointed in accordance with State Statutes

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

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EXHIBIT E

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CASE NO.: 2016-CP-26-6056
	)	
RHH LAND INVESTORS, LLC also d/b/a RHH LAND INVESTMENTS, LLC	)	
	)	
PLAINTIFF	)	
	)	
VS.	)	
	)	
LEONARD R. WATTS, THE PLANTATION AT COLONIAL CHARTERS, LLC, and SAGO PLANTATION II DEVELOPMENT, INC.	)	
	)	
DEFENDANTS	)	

2017 FEB 28 PM 12:17

CERTIFICATE OF SERVICE

I DO HEREBY certify that on this date I have served the Affidavit of Default by mailing a true and correct copy of the same via U.S. Mail to Defendants at the address indicated as follows:

Leonard Ray Watts
19411 Schooner Drive
Cornelius, NC 28031

James Marshall Biddle
142 University Dr.
Conway, SC 29526
Registered agent for Sago Plantation II Development, Inc. and The Plantation at Colonial Charters, LLC

Michelle Stith

February 24, 2017
Mt. Pleasant, South Carolina

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STATE OF SOUTH CAROLINA COUNTY OF HORRY RHH Land Investors, LLC, Plaintiff(s), v. Leonard R. Watts, The Plantation at Colonial Charters, LLC, and Sago Plantation II Development, Inc., Defendant(s).	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT County C/A No.: 2017-CP-40-01795

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO RECONSIDER ORDER DENYING MOTION TO SET ASIDE JUDGMENT AND MOTION TO STAY SUPPLEMENTAL PROCEEDINGS AND ENFORCE JUDGMENT

Plaintiff RHH Land Investors, LLC (hereinafter the "Plaintiff") herein responds to Defendant Watts' Motion to Reconsider Order Denying Motion to Set Aside Judgment and Motion to Stay Supplemental Proceedings and Enforce Judgment ("Motion to Set Aside") filed September 29, 2023. This Court denied Defendant Watts' Motion to Set Aside after considering Defendant Watts' Memorandum in Support of Defendant's Motion to Set Aside Default Judgment, Plaintiff's Memorandum in Opposition to Defendant's Motion to Set Aside Default and Motion to Stay Supplemental Proceedings and Enforcement of Judgment, a combined ten (10) exhibits, oral argument from all parties, and a review of the record in the case. Based on this thorough record, there remains no genuine issue regarding the issues raised in the Motion to Set Aside. For the reasons discussed below, Defendant Watts' motion to reconsider should be denied.

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Introduction

As a threshold matter, it is important to note what the Motion to Reconsider does *not* do. It does not challenge the timing or nature of Defendant Watts' December 20, 2016 filing captioned "Answer," it does not challenge the purported fraud surrounding the Affidavit of Default, nor does it seek amendment to add findings regarding whether the party seeking relief has a defense that will prevail; a requirement to properly bring a motion under Rule 60(b), SCRCP.

Defendant Watts' Motion to Reconsider is, at its core, a mix of new (and therefore impermissible) arguments and a repetition of issues on which this Court has already ruled. The Court addressed all appropriately and timely raised issues in its Sept. 26, 2023 Order. Defendant Watts' Motion to Reconsider thus fails at the outset, and also further fails on the issues raised in the Motion to Reconsider, as discussed fully below.

Standard of Review

"S.C. R. Civ. P. 59(e) and the federal rules of civil procedure are practically identical." *Elam v. SC Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). The Fourth Circuit has said of Rule 59(e) motions that, "[i]n general 'reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Assoc.*, 148 F.3d 396, 402 (4th Cir. 1998) (citations omitted). Indeed, a 59(e) motion is not necessary to preserve issues that have been ruled upon. Instead, it is used to preserve those that have been raised to the trial court but not ruled upon. *Bailey v. Segars*, 346 S.C. 359, 365, 550 S.E.2d 910, 913 (Ct. App. 2001). An issue or argument cannot be raised for the first time via a Rule 59(e) motion if it could have been raised prior to judgment but was not. *Brailsford v. Brailsford*, 380 S.C. 443, 448, 669 S.E.2d 342, 344-45 (Ct. App. 2008).

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ARGUMENT

A. Defendant failed to comply with the time requirements of Rule 59, SCRCP.

Defendant Watts timely filed a Motion pursuant to Rule 59(e), SCRCP on September 29, 2023. However, he failed to "provide a copy of the motion to the judge within ten (10) days after the filing of the motion," as required in Rule 59(g), SCRCP. Defendant's deadline to provide a copy of the 59€ Motion to the Special Referee was October 9, 2023. See Rule 6(a), SCRCP. However, as of the date of this memorandum, Defendant Watts has not yet provided a copy of the motion to the Special Referee. Pursuant to Rule 59(g), Defendant Watts' motion should be dismissed for this reason alone. "Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule." *Smith v. Fedor*, 809 S.E.2d 612, 422 S.C. 118 (S.C. App. 2017).

The time limits for motions under Rule 59, SCRCP "may not be extended" unless provided in that rule. Rule 6(b), SCRCP. No mechanism exists in Rule 59 to so extend this time period. Consequently, Plaintiff's 59(e) Motion fails in its entirety for failure to comply with the jurisdictional rules of Rule 59, SCRCP. The irony is not lost on the Plaintiff that a Defendant claiming that the rules of civil procedure were not followed and that he was not provided proper service and notice has failed follow the rules and provide proper service and notice. The equitable maxim of "one who seeks equity must do equity" seems appropriate to the situation at hand. The Special Referee's ruling should follow the case in *Smith*, where "the trial court properly denied Smith's motion for reconsideration because he did not timely provide a copy of the motion to the judge." *Id.*

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B. Defendant's arguments are impermissibly raised for this first time in the 59(e) Motion and are not properly before the Court.

Defendant raises arguments for the very first time by way of the 59(e) Motion. This is not allowed, and these arguments should be disregarded. The argument that Defendant was not provided notice of the damages hearing date was not raised in Defendant's Motion to Set Aside. Instead, Defendant's written motion and the memoranda filed prior to the hearing, cited Rules 60(b)(1) and 60(b)(3), SCRCP, and focused on alleged fraud regarding the Affidavit of Default filed by Plaintiff's prior counsel. The Order which Defendant asks to be reconsidered, found that Defendant's Motion to Set Aside was subject to a one-year deadline to challenge the judgment. Defendant now attempts to raise new issues as to why his judgment should be set aside, in an obvious attempt to circumvent the requirement to bring a motion to set aside within one year of the judgment, based solely on a purported affidavit of a member of the Clerk of Court's staff, Bridgett Williamson, and filed of her own volition. Ms. Williamson's affidavit should not be considered, and Defendant's 59(e) Motion should be denied as it attempts to raise new allegations for the first time.

C. Ms. Williamson's affidavit provides no evidence of lack of service.

While Plaintiff strongly contends that the affidavit of Bridgett Williamson should not be considered by this court, its contents are meaningless as they provide no evidence that Defendant was not properly served or provided notice of any hearings in this case. Further, the Special Referee has already found that Defendant failed to provide evidence regarding Judge Culbertson's factual findings and there is no evidence in the record to support a reconsideration of such a finding. The allegations in Defendant's motion are not supported to a level that would render the judgment void.

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First, the two South Carolina Rules of Civil Procedure at issue in this case, Rule 55(b)(2) and Rule 5(a), place requirements of service and notice, respectively, on the **Plaintiff** not on the Clerk of Court. "If the party against whom judgment by default is sought has appeared in the action, the party shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application…Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action." Rule 55(b)(2), SCRCP. The rules of civil procedure are requirements for litigants and their counsel. Those parties cannot neglect their responsibilities in reliance that the clerk of court will cover up errors.

Defendant was properly served with the Motion for Default Judgment more than three (3) days prior to the damages hearing, as evidenced by the certificate of service attached to the filed motion, so the first requirement of Rule 55(b)(2) is satisfied. The only remaining requirement is that of Rule 5(a), SCRCP; giving notice to the hearing on unliquidated damages. Again, absent evidence to the contrary, the presumption must be that Judge Culbertson was satisfied that notice had been given. Such presumption is bolstered by the fact that Defendant Watts did, in fact, make an appearance in the case and was properly served with the Motion for Default Judgment some 65 days prior to the damages hearing. "[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001).* To believe that Defendant was not provided notice of the damages hearing is to believe that a) it is reasonable for a Defendant to make no inquiry on the scheduling of a dispositive motion for over six (6) years, and b) Judge Culbertson, prior to issuing the

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judgment, failed to inquire as to whether Defendant received notice of the hearing, from the party moving for default judgment.

It is unreasonable to believe that the evidence in the record, or lack thereof, is sufficient to overcome the finding of proper notice, implicit in the judgment entered by Judge Culbertson. Defendant's motion pursuant to Rule 59(e) should be denied. Further, lack of notice of the entry of an order or judgment, after the fact, would not render such order or judgment void, even though required by the Rules of Civil Procedure.

CONCLUSION

Defendant Watts is not entitled to any of the relief he has requested. Despite being served with pleadings and notices at every step of this matter, he has consistently either failed to reply outright, or failed to reply in a manner consistent with the rules. Defendant's motion should be denied, the Special Referee should not reconsider its rulings, and this court should decline to issue any requested Order Staying the Supplemental Proceedings and Enforcement of Judgment.

Respectfully submitted,

s/ Jonathan D. Waller
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Dated: October 19, 2023

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