

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**Aug 12 2024**

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2022-CP-10-05916

Marka Danielle Rodgers .....Appellant,

v.

CNT Foundations.....Respondent.

**APPELLANT’S RESPONSE TO MOTION TO DISMISS**

The Appellant hereby responds to Respondent’s motion to dismiss dated July 31, 2024.

Rule 59(f) SCRCR states that “The time for appeal for all parties shall be stayed by a timely motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions.” Rule 203(b)(1) SCACR states:

“When a timely motion for judgment n.o.v. (Rule 50, SCRCR), motion to alter or amend the judgment (Rules 52 and 59, SCRCR), or a motion for a new trial (Rule 59, SCRCR) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.”

In this case, the Circuit Court entered a formal order compelling arbitration on November 3<sup>rd</sup>, 2023. The Appellant filed a motion to reconsider on November 10<sup>th</sup>, 2023. The order denying that motion was filed on June 26<sup>th</sup>, 2024, and the Notice of Appeal was served on July 25<sup>th</sup>, 2024. Thus, the appeal was timely served.

The Respondent argues that this appeal is untimely because of a purported failure to comply with 59(g) SCRCPP.

Respondent's reliance on SC Coastal Conservation League is misplaced because the Court wasn't considering whether or not 59(g) affected the timeliness of an appeal. 442 S.C. 409, 899 S.E.2d 609 (Ct. App. 2024). In that case, the then-plaintiff filed a motion to amend because the Court had not ruled on an issue previously raised. Id. 442 S.C. at 418, 899 S.E.2d at 614. The Court ultimately dismissed that motion on the basis of 59(g) SCRCPP. Id. On appeal, the Court of Appeals refused to consider that un-ruled-upon issue and found it unpreserved. Id. 442 S.C. at 418-19, 899 S.E.2d at 614. Important to the instant matter, the Court went on to consider the other issues presented on appeal. Id.

Further, the Court in this case did not dismiss this motion to reconsider solely because of 59(g) SCRCPP. Despite Respondent's assertion that the "the issues remain unaddressed by the Circuit Court," the very order on the motion to reconsider says itself "[...]and furthermore, based on the arguments of counsel presented, this Court DENIES Plaintiff's Motion to Reconsider." There was discussion of 59(g) at the hearing on the motion, and the Court indicated that while it could "dismiss just on that basis," that "it was okay" and did not indicate that it would rule solely based upon 59(g). See Exhibit A, Affidavit of Counsel. A Court may decide motions to reconsider on the merits despite compliance with 59(g) if it wants to. Gallagher v. Evert, 353 S.C. 59, 63, 577 S.E.2d 217, 219 ("we find no error in the [trial] court's decision to decide the motion despite [the appellant's] failure to comply with Rule 59(g)").

Third, Plaintiff did not complain of or raise compliance with 59(g) with the trial court, and thus cannot raise the issue here for the first time. State v. Dunbar, 356 S.C. 138, 142 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled

upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.”); See Exhibit A, Affidavit of Counsel.

Based on the foregoing, the Appellant would respectfully request that the Court deny Respondent’s motion.

Respectfully submitted,

/s/ Daniel Summa

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*Attorney for Appellant*

August 12, 2024  
Charleston, SC

**Exhibit A to**  
**Appellant's Response**  
**to Respondent's**  
**Motion to Dismiss.**  
**August 12, 2024**

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Marka Danielle Rodgers .....Appellant,

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**AFFIDAVIT OF COUNSEL**

Personally Appeared before me, Daniel Summa, being first duly sworn, deposes and says  
that:

1. My name is Daniel Summa and I am counsel of record for the Appellant in the above-captioned matter.
2. I am submitting this affidavit in accordance with Rule 240(c)(3), SCACR which directs parties to file affidavits in support of factual assertions in the event that a Record on Appeal has yet to be filed.
3. On June 20<sup>th</sup>, 2024, the parties appeared before the Circuit Court of Charleston County, Judge Jennifer B. McCoy presiding, on Appellant's motion for reconsideration.

4. At that hearing, counsel for Respondent argued the merits of the motion, and did not mention or otherwise make an argument relating to Appellant's service or non-service of the motion upon the Court.
5. At that hearing, there was discussion regarding 59(g) SCRPC, and the Court indicated that while it could "dismiss just on that basis," that "it was okay" and did not indicate that it would rule solely based upon 59(g).

Nothing Further.



Daniel Summa  
Attorney for Appellant

SWORN and subscribed before me, this 12 day of August, 2024

  
Notary Public

My commission expires: March 11 2034

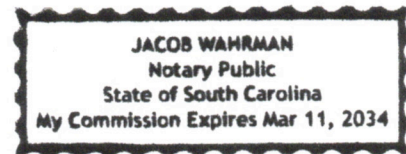


Exhibit B to Appellant's Response to  
Respondent's Motion to Dismiss.

August 12, 2024

Marka Danielle Rodgers  
PLAINTIFF(S)

Cnt Foundations  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

This matter came before the Court on June 20, 2024 as Plaintiff's Motion to Amend the Judgment, filed November 10, 2023. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 8/34, 842 (1992). "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." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).  
This Court was not served with this motion pursuant to Rule 59(g), and furthermore, based on the arguments of counsel presented, this Court DENIES Plaintiff's Motion to Reconsider.

**ORDER INFORMATION**

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

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/26/2024 .

**RECEIVED**  
**Jul 30 2024**  
**SC Court of Appeals**

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

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

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Charleston Common Pleas

**Case Caption:** Marka Danielle Rodgers VS Cnt Foundations

**Case Number:** 2022CP1005916

**Type:** Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2024-06-26 12:19:51 page 3 of 3