

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 96CP4001230

Thomas J Silvester

Spring Valley Country Club

Nicholas D Kelley

PLAINTIFF(S)

DEFENDANT(S)

RICHLAND COUNTY
FILED
2013 AUG 27 PM 1:45
JEANETTE W. McBRIDE
CLERK & CS.

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- 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 _____
- 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

This order ends does not end the case.

Additional Information for the Clerk : _____

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
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 27th day of Aug, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas J. Silvester
ATTORNEY(S) FOR THE PLAINTIFF(S)

John Edward Cuttino
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W McBride

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Thomas J. and Carolyn Silvester,

Plaintiffs,

v.

Spring Valley Country Club,

Defendant.

) IN THE COURT OF COMMON PLEAS

) FOR THE FIFTH JUDICIAL CIRCUIT

) CIVIL ACTION NO. 96-CP-40-1230

) **ORDER GRANTING DISMISSAL**
) **PURSUANT TO RULE 41(b), SCRPC**

RICHLAND COUNTY
FILED
2013 AUG -6 PM 3:24
JEANETTE M. HOBENIDE
C.C.P. & G.S.

This matter came before the Court by way of the Defendant's Rule 41(b) Motion to Dismiss for failure to prosecute. The Motion was heard on August 5, 2013 in Columbia, South Carolina. Plaintiffs Thomas J. Silvester and Carolyn Silvester have no attorney of record and appeared pro se. Appearing on behalf of the Defendant Spring Valley Country Club was John E. Cuttino, Esquire, of Columbia, South Carolina.

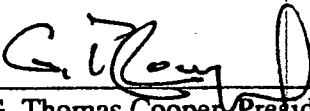
After a review of the record, an analysis of the party's submissions to the Court, and careful consideration of the oral arguments of all parties and the applicable law, it appears to the Court as follows:

Plaintiffs Thomas and Carolyn Silvester filed their original Summons and Complaint, pro se, on April 11, 1996. On June 17, 1998, Circuit Judge Henry McKellar heard and granted Defendant Spring Valley Country Club's Motion for Summary Judgment. The Plaintiffs

thereafter appealed Judge McKellar's Order for Summary Judgment. On February 12, 2001, the South Carolina Court of Appeals issued its Opinion, affirming and reversing in part Judge McKellar's decision, and remanding the action to the Richland County Court of Common Pleas. *Silvester vs. Spring Valley Country Club*, 344 S.C. 280, 542 S.E.2d 563 (Ct. App. 2001). There is ~~no evidence this action appeared on the Richland County trial roster thereafter.~~ There is also no evidence the Plaintiffs made any effort to pursue or advance their case to trial at any time between the issuance of the Court of Appeals opinion on February 12, 2001. Only in late March or early April 2013, did they telephone the Richland County Clerk of Court to inquire about the status of their case. This amounts to a period of over twelve (12) years of inactivity. Further, more than seventeen (17) years have passed since the Plaintiffs filed their original Complaint.

A Plaintiff has the burden of prosecuting his or her action, and a trial court may properly dismiss an action for the Plaintiff's unreasonable neglect in proceeding with the case. *McComas vs. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006)(citing *Don Shevey & Spires, Inc. vs. American Motors Realty Corporation*, 279 S.C. 58, 301 S.E.2d 757 (1983)). In addition, a party has a duty to monitor the progress of his or her case. Lack of familiarity of legal proceedings does not excuse this obligation, and the Court will not hold a layman to any lesser standard than is applied to an attorney. *Goodson vs. American Bankers Insurance Company of Florida*, 295 S.C. 400, 368 S.E.2d 687 (Ct. App. 1988). Rule 41(b) of the South Carolina Rules of Civil Procedure states: "For failure of the Plaintiff to prosecute or to comply with these rules or any

Order of the Court, a defendant may move for dismissal of an action or of any claim against him". The Defendant Spring Valley Country Club has so moved, and the circumstances of this matter warrant a dismissal of the Plaintiff's action. Accordingly, IT IS HEREBY ORDERED that the Defendant's Motion is granted, and this action is dismissed. AND IT IS SO ORDERED.


G. Thomas Cooper, Presiding Judge
Court of Common Pleas
Fifth Judicial Circuit

August 6, 2013
Columbia, South Carolina

* Richland County's ^{Court} never gave appellants a chance to prosecute - never scheduled - Did nothing ignored Case remanded + SC Court of Appeals opinion
Carolyn Schuster