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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Judge

Appellate Case No. 2023-001980

Jenna Robbins,..……...……..……...……...Appellant,

v.

Imfi3, LLC, D/B/A The Indigo At Cross Creek, Taft Management Group, Taft Family Ventures, and Southern-EEZ Landscaping, LLC, and Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping,

Of whom Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping is the……..……...Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES

I. **Did the circuit court err in refusing to amend the Respondent's name in a judgment, especially where there was only a highly technical name deviation that never misled the Respondent about who was being sued?**

II. **Did the circuit court err in its rulings on related motions, since its ruling on the judgment amendment issue was the premise for its rulings on the related motions?**

III. **Where the matters heard had been referred to a special referee, did the circuit court err in purporting to exercise subject matter jurisdiction and render decisions on them?**

STATEMENT OF THE CASE

This is an appeal by plaintiff Jenna Robbins ("the Plaintiff") of an order a) refusing to amend a judgment to reflect that the name variant used for defendant Southern-EEZ Landscaping ("the Defendant") (which is a trade name under which Southern Horticulture Group, LLC does business) should be amended to note the technically correct name of the defendant and b) making rulings against the Plaintiff on related motions. (R. pp. 1-11.) Those related motions were the Defendant's motion to compel discovery, the Plaintiff's motion for protection from discovery, and the Plaintiff's motion to dismiss the Defendant's counterclaim, which sought a determination that it was not sued in this case and a determination the judgment rendered was not against the Defendant. (R. pp. 1-11, 41-71.)

This is a personal injury case arising out of the Plaintiff tripping over a hazard outdoors on apartment complex property for which the Defendant maintains the landscaping under a contract. (R. pp. 32-40, 211-13, 362.) The Defendant does business as "Southern-EEZ Landscaping," contracted to perform the landscaping services involved under that name, and was sued under the name "Southern-EEZ Landscaping, LLC." (R. pp. 31, 32, 33, 34, 188-93, 211-13, 357-59, 363-65.)

The Defendant, which has the technical, state-registered name "Southern Horticulture Group LLC," has never done business under its registered name. (R. pp. 188-93, 211-13, 357-59, 363-65.) Instead, at the time it began operations in 2015, the Defendant purchased the assets of the entity with the registered name "Southern-EEZ Landscaping, LLC," including the right to use the name "Southern-EEZ Landscaping," and has done business under that name for all of the time it has been operating. (R. pp. 188-93, 211-13, 357-59, 363-65.) Since the

2015 asset purchase, the entity with the registered name Southern-EEZ Landscaping, LLC has not done any business. (R. pp. 357-59.)

The Defendant's website states that "Southern-EEZ Landscaping" has been in business since 2010, thus including the time that it was operated by the entity with the registered name "Southern-EEZ Landscaping, LLC," and also states that Nate Negrin, the Defendant's owner, acquired the Southern-EEZ Landscaping business in 2015. (R. pp. 363-65.) The website does not state that the business is operated by any different entity from the one that started operating it in 2010. (R. pp. _____; pages from Southern-EEZ Landscaping's website.) The only mention of the name "Southern Horticulture Group LLC" on the website is in small print at the bottom of the web pages that states "© Southern Horticulture Group, LLC." (R. pp. _____; pages from Southern-EEZ Landscaping's website.)

The summons and complaint in this action were filed on March 3, 2022, and were served on the Defendant by delivery to Nate Negrin, the Defendant's owner and president, on April 6, 2022. (R. p. 184.) On April 14, 2022, a paralegal at the Defendant's counsel's firm emailed the following message to the Plaintiff's counsel: "Our firm was just retained to represent Southern-EEZ Landscaping, LLC in the above matter. Robert C. Gunst, Jr., will be handling this case on behalf of Southern-EEZ. We are reaching out to confirm the date of service for our client. From there, we would like to explore the possibility of an extension of time to answer the complaint and discovery." (R. p. 272.) Plaintiff's counsel, copying his paralegal Dana, replied with an email stating, "Dana[,] please report back on the date of service. No problem on the extension to answer and respond to the discovery. Just let us know how much time you need." (R. pp. 270-71.) Plaintiff's counsel's paralegal provided the date of service. (R. pp. 269.)

At no time after that did the Defendant propose an amount of time for an extension. Instead, Defendant's counsel stated that the Plaintiff "has named the wrong landscaping defendant and has not served the correct entity who actually held the landscaping contract for this project." (R. p. 278.) This led to numerous emails and some telephone calls between counsel, in which Defendant's counsel insisted that his client had neither been named nor served in the lawsuit. (R. pp. 233-34, 282, 286, 291, 296, 304-06.) Email messages from Defendant's counsel in this discussion state that "Southern Horticulture Group, LLC is the legal entity that uses Southern-EEZ Landscaping for marketing" and referred to the complaint listing the Defendant's name as "Southern-EEZ Landscaping" as "the misnomer." (R. p. 286.)

An affidavit of default, entry of the Defendant's default, and a motion for a default judgment were filed on June 16, 2022. (R. pp. 72-73, 185-87.) An order of default that directed a damages hearing was filed later the same day. (R. pp. 18-19.)

The next day, an order was filed referring the action as against the Defendant to a special referee. (R. pp. 20-22.) The order provides that the special referee has jurisdiction over all motions directed at any judgment the special referee renders. (R. p. 21.)

The Defendant, using the name Southern Horticulture Group, LLC, filed a motion to intervene on July 11, 2022, claiming that it was not the entity sued, a motion for injunctive relief to prevent the special referee from going forward with the damages hearing, and a motion to strike or vacate the entry of default or, in the alternative, for relief from default. (R. pp. 74-112.) With those motions, it filed an affidavit of a Tyler Daniel Mays, "a Litigation Specialist employed by Builders Mutual Insurance Company." (R. pp. 354-56.) That affidavit states that Builders Mutual Insurance Company provides commercial general liability insurance for "Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping[.]" (R. p. 354.) The

affidavit states that Builders Mutual engaged the Defendant's counsel "for the defense of its insured, Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping[.]" (R. p. 355.)

The court heard the motion to intervene and, on August 2, 2022, issued an order granting the motion. (R. pp. 23-24.) That order observes the Defendant's "acknowledgment that it employed a landscaping contract for" the apartment complex at issue and provides that "[t]he decision to allow intervention is without prejudice to the assertion [that the proposed intervenor and the Defendant are the same entity] raised by the Plaintiff." (R. p. 24.)

Per that order, the Defendant, under the name Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping, filed an answer, counterclaim, and cross-claim alleging that it was not the same entity as that named as a defendant. (R. p. 41-71.)

The Plaintiff filed an affidavit of Tyler Jonathan Lee Smith, the former owner of Southern-EEZ Landscaping, LLC. (R. pp. 357-60.) In his affidavit, Mr. Smith states that there has never been any overlap in the time that Southern-EEZ Landscaping, LLC did business as Southern-EEZ Landscaping and the time that Southern Horticulture Group, LLC did business as Southern-EEZ Landscaping, and "[a]t no time has there ever been two companies doing business as Southern EEZ Landscaping in South Carolina." (R. pp. 357-58.) "Since March 31, 2015, the only company that has done business in South Carolina as Southern EEZ Landscaping is the company owned by Nathaniel I. Negin, Southern Horticulture Group, LLC d/b/a Southern EEZ Landscaping." (R. pp. 357.) Mr. Smith's affidavit further notes that the asset purchase agreement between his limited liability company and Mr. Negrin's company transferred to the latter the right to use the name "Southern EEZ Landscaping," along with "all trademarks, trade names, the rights to use all telephone numbers, customer lists, and the website of southerneez.com[,]" which is the website the Defendant uses. (R. pp. 358, 363-65.)

"Mr. Negrin and Southern Horticulture Group, LLC began operating and doing business in the name and holding themselves out to the public as Southern EEZ Landscaping as of March 31, 2015." (R. p. 358.)

On August 11, 2022, the special referee held a damages hearing. As her order recites, Defendant's counsel "appeared at the hearing on behalf of Defendant Southern Horticulture Group d/b/a Southern EEZ Landscaping but did not participate in the hearing." (R. p. 25.) The order finds as a fact that "[s]ervice was made on Southern-EEZ Landscaping by personally serving Nate Negrin on April 6, 2022[.]" (R. p. 26.) The order rendered judgment against the Defendant for $1,400,000.00 in actual damages and $100,000.00 in punitive damages. (R. p. 29.)

On August 23, 2022, the Plaintiff made a motion to amend the judgment "to correct a misnomer and amend the judgment to be in the name and enforceable against Southern Horticulture Group, LLC d/b/a Southern EEZ Landscaping." (R. p. 113.) The denial of that motion is at the heart of this appeal.

The Defendant then served discovery requests on the Plaintiff. (R. p. 140.)

On September 2, 2022, the Plaintiff moved to dismiss the counterclaim and cross-claim, noting that judgment had already been rendered as to the Defendant. (R. pp. 132-36.) The same day, the Plaintiff moved for protection from discovery, noting that the Defendant was in default and had already had judgment rendered against it. (R. pp. 137-38.)

At some point after that, though the record does not say when, the special referee took the position that the reference to her had ended. (R. p. 168 ln. 3-9.)

On November 11, 2022, the Defendant moved to compel responses to its discovery requests. (R. pp. 139-43.)

On June 2, 2023, the Defendant moved for summary judgment on the question of whether it is the same entity that was sued. (R. pp. 144-46.) (This motion has not been heard.)

A motions hearing was held on August 14, 2023, before the Honorable Brian M. Gibbons. (R. p. 152.) On August 16, 2023, Judge Gibbons issued a Form 4 order that directed Defendant's counsel to prepare a more formal order. (R. pp. 12-14.)

Defendant's counsel did so, and the formal order was issued on November 21, 2023. (R. pp. 1-11.) The lower court granted the Defendant's motions and denied the Plaintiff's, reasoning that "[b]ecause the Court finds that Southern Horticulture and Defendant Landscaping are legally separate entities, the Complaint and Summons asserted against Defendant Landscaping cannot be regarded as against Southern Horticulture. In the absence of proper service and personal jurisdiction, the Default Judgment also cannot be regarded as against Southern Horticulture." (R. pp. 4-5.)

The Plaintiff moved to reconsider on November 30, 2023, noting that "[t]he decision reached by the court in its order goes against the South Carolina precedent (apparently, against *all* of the precedent) that deals with deviation of the way a defendant is named in a summons and complaint from that defendant's technical legal name." (R. pp. 147-51.)

The next day, Judge Gibbons issued a Form 4 order denying the motion to reconsider. (R. pp. 15-17.)

This appeal followed.

STATEMENT OF FACTS

The Defendant wanted the world to believe it was the same entity as Southern-EEZ Landscaping, LLC and took deliberate steps to cultivate that perception, billing itself as Southern-EEZ Landscaping everywhere except in the courts and in tax filings. (R. pp. 188-

93, 210-13, 357-59, 363-65, 372-82.) The name discrepancy in the complaint did not mislead the Defendant about who had been sued; quite the opposite, as its lawyers' emails show. (R. pp. 232-39, 269-73, 278-301, 304-06, 361.) The Defendant knew it had been sued about its acts and omissions in the course of work it performed at a place where it had a contract to do that work. (R. pp. 188-93, 211-13, 357-59, 362-65.)

The Defendant, rather than take obvious measures to protect itself, such as answering and stating that the answer is submitted to the extent that the entity named was actually the Defendant, deliberately undertook a defense strategy that the law provides was doomed to fail. The circuit court accepted the premise that these were different entities when everyone else involved in the case, including the Defendant's owner and president and its attorneys, knew that the Defendant is who had been sued.

STANDARD OF REVIEW

An appellate court reviews the grant or denial of a motion to amend a judgment to correct or clarify the name of the defendant for abuse of discretion. Tunstall v. Lerner Shops, Inc., 160 S.C. 557, 562, 159 S.E. 386, 388 (1931). Our Supreme Court has noted, however, that "no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law." Morris v. BB&T Corp., 438 S.C. 582, 885 S.E.2d 394 (2023). "The American tradition of rule of law has recognized from its earliest days that a motion to a court's discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." Jordan v. Hartford Fin. Grp., Inc., 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021). "An abuse of discretion occurs when the conclusions of the trial

court are either controlled by an error of law or are based on unsupported factual conclusions." In re: Care and Treatment of Miller, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011).

As the lower court's decision upon the other motions ruled upon here depended upon its decision to deny the motion to amend the judgment and not on any additional basis (R. pp. 4-5), this court's decision on whether to affirm or reverse the decision to deny amendment of the judgment will be determinative as to them, and no additional standard of review need be applied to reach a decision as to them.

Whether subject matter jurisdiction is present is a question of law. See Chew v. Newsom Chevrolet Inc., 315 S.C. 102, 103, 431 S.E.2d 631 (Ct. App. 1993) ("question of subject matter jurisdiction is a question of law for the court"). An appellate court reviews all questions of law *de novo*. Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010); Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010).

ARGUMENT

The statement of the case is lengthy, but the central questions are simple: By asserting a highly technical name defect that never misled it about who was being sued, can the Defendant escape the fact that it was sued and served and chose not to plead and defend? Was the circuit court right to let the Defendant escape the consequences of its choices? The law says no. Respectfully to the circuit judge, he ignored the law.

Reversal would be required on this point, but it is also independently required because the special referee, not the "regular" circuit court, held the subject matter jurisdiction to make the decisions that are on appeal here.

I. The circuit court ignored the law on name deviation and amendment of judgments, including the Tunstall case on which it based its decision.

The circuit court based its decision to deny the motion to amend the judgment on one phrase from Tunstall v. Lerner Shops, Inc., 160 S.C. 557, 159 S.E. 386 (1931). The circuit court has misread Tunstall.

The Defendant advocated below that the circuit court should base its ruling on these words from Tunstall: "When an action is brought against a corporation . . . where the name is mistaken materially and substantially, or where there is such a variation that a different entity is indicated, the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein[.]" Id. at 563. (R. p. 172 ln. 16 through p. 173 ln. 4.) The circuit court did that. (R. pp. 4-5.) The circuit court ruled that this means that the Plaintiff never secured personal jurisdiction of the Defendant, despite the fact that the Defendant was served with the summons and complaint and despite the fact that its attorneys appeared for it and only later took the position that the name pled in the complaint did not belong to their client. (R. pp. 4, 184, 272.)

Those words are not the Supreme Court's holding in Tunstall; they are actually part of a quotation from a Corpus Juris treatise. Id. They occur in the context of discussion about various ways misnomer of a defendant has been treated by various authorities, primary and secondary (a legal treatise being the latter). Id. at 562-66. There are also presented out of the context of the full quotation (even the full sentence) from which they come, which reads as follows:

> The misnomer of a corporation in pleadings and otherwise in judicial proceedings has the same effect as the misnomer of an individual. . . . And when an action is brought against a corporation, the general rule is that where the name is mistaken materially and substantially, or where there is such a variation

> that a different entity is indicated, the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein; but a mere misnomer of a corporation defendant in words and syllables is immaterial, and a judgment in the action will bind it if it is duly served with process or appears and does not plead the misnomer in abatement. As a general rule the misnomer of a corporation in a notice, Summons, notice by publication, garnishment citation, writ of certiorari, or other step in a judicial proceeding is immaterial if it appears that it could not have been, or was not, misled.

Id. at 563.

What Tunstall actually holds is that, where an amendment of a judgment to correct or clarify a misnomer of the defendant is sought, it should be allowed where the amendment is "not so extensive as to substitute a new defendant, but was merely a correction of a mistake in the name of the defendant" and "the variation in names is not such as to indicate a different entity, and there is no suggestion that the [defendant] was misled to thereby to his prejudice." Id. at 566.

This holding in Tunstall is consistent with this court's and the Supreme Court's jurisprudence on this question. In South Carolina, "[i]t has long been recognized that a corporation may be known by several names in the transaction of its general business." McCall v. Ikon, 363 S.C. 646, 611 S.E.2d 315, 318 (Ct. App. 2005) (citing Long v. Carolina Baking Co., 193 S.C. 225, 239, 8 S.E.2d 326, 332 (1939)). "If [an entity] is sued in a name under which it transacts business, the process will ordinarily be sufficient to bring it before the court." Griffin v. Capital Cash, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992). Likewise, "[i]f a corporation has acquired a name by usage, an adjudication against it by the name so acquired is valid and binding." McCall, 363 S.C. 646, 611 S.E.2d at 318. Moreover, "[t]he misnomer of a corporation in a notice, summons, or other step in a judicial proceeding is

immaterial if it appears the corporation could not have been, or was not misled." Id. (quoting Griffin, 310 S.C. at 292, 423 S.E.2d at 146). Additionally, "the misnomer of a corporation is not fatal where no proper and timely objection is made by a plea in abatement." H&H Glass Col., Inc. v. Wynne, 289 S.C. 389, 391, 346 S.E.2d 523, 525 (1986).

"[W]here a party is served by a wrong name, and the writ is served on the party intended to be served and he fails to appear and plead the misnomer in abatement, and suffers judgment to be obtained by default against him in the erroneous name, he is concluded, and execution may be issued on the judgment in that name and levied upon the property and effects of the real defendant." Tri-County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 240, 399 S.E.2d 779, 782 (1990).

In other words, as the South Carolina Supreme Court has warned:

> A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else.

Englert, Inc. v. Leafguard USA, Inc., 365 S.C. 565, 619 S.E.2d 12, 15 (2005). For instance, in McCall, the plaintiff sued "IKON, d/b/a IKON Educational Services," in a breach of contract action based on a contract he had entered with "IKON Educational Services." Service of the complaint was initially returned by the registered agent, CT Corporation System with a letter that advised that "it was not the agent for any entity by the name of 'IKON Educational Services'" and that "CT Corporation System serves as Registered Agent for more than one company with 'IKON' as part of its name.'" McCall, 363 S.C. 646, 611 S.E.2d at 316. After no answer was filed, the plaintiff filed an affidavit of default and a default judgment was

entered against "IKON, d/b/a IKON Educational Services." Id. On appeal from a denial of IKON's motion to set aside the default, IKON argued that "IKON Education Services" was "merely a division of IKON Office Solutions Technology Services, LLC" and was not a legal entity capable of being sued. Id. It argued that the plaintiff should have served one of the corporations actually recognized and registered in South Carolina, including IKON Office Solutions Technology Services, LLC. Id. To support this argument, IKON stated that its promotional literature provided disclosure of the correct entity name to the plaintiff. That disclosure was "obscurely in a footnote in miniscule print." Id. at 318. In finding that this did not allow IKON to escape default, this court held:

> To give the reader a sense of the disclosure, as best as we can reproduce, at the bottom of the third page of this eight page document, the following appears: IKON Education Services is a business unit of IKON Office Solutions Technology Services, LLC, a wholly owned subsidiary of IKON Office Solutions, Inc. Conversely, the booklet prominently and consistently refers to the company under the banner logo "IKON" and "IKON Education Services" – the very entity that entered into the contract with McCall. Additionally, these materials refer the reader to "www.ikoneducation.com" for further information. We find that this obscure and barely legible reference in the promotional literature to IKON's parent does not aid its efforts to escape default.

Id. That is the sort of "disclosure" we have in the instant case on the Defendant's website – except that all it states is "© Southern Horticulture Group, LLC." (R. pp. 363-65.) That is not really a disclosure of anything. It does not even state that the legal name of Southern-EEZ Landscaping is actually Southern Horticulture Group, LLC.

In short, this court in McCall held that, "[b]ecause IKON prominently held itself out as IKON Education Services, it would be wholly inequitable to find [the plaintiff's] attempts to serve the company under that name ineffective" and thus found that, although CT Corporation

System had sent the letter to the plaintiff attempting to explain the situation, the plaintiff "effectively served IKON with his summons and complaint through the company's registered agent, CT Corporation System." Id. at 318-19. Similarly, in Griffin v. Capital Cash, 310 S.C. 288, 423 S.E.2d 143 (Ct. App. 1992), the plaintiff sued "Capital Cash." The plaintiff had a consumer loan with "Capital Cash" and served the summons and complaint at "Capital Cash's" office address that was listed on her billing statement. Id. at 291, 423 S.E.2d at 145. After a default judgment was entered, on appeal, the defendant argued that "Capital Cash is neither an individual nor a corporate entity" and that the named party should have been "First Deposit National Bank." Id. This court, however, first found that "Capital Cash was the name First Deposit National Bank used to do business with [the plaintiff]," as "First Deposit National Bank's initial solicitation was in the name of Capital Cash," the plaintiff's "monthly statements were sent by Capital Cash," and her "payments were made to Capital Cash." Id. at 292, 423 S.E.2d at 146. This court then noted that the defendants "knew that 'Capital Cash' was a name used by First Deposit National Bank to conduct its business." Id. at 293, 423 S.E.2d at 146. As such, the court held that "service of process under the name 'Capital Cash' was sufficient to bring First Deposit National Bank before the court." Id. Likewise, in Tri-County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 399 S.E.2d 779 (1990), the plaintiff sued "Palmetto Ice Company" for conversion of an ice box and served Palmetto Ice Company's president. No response was made, and a default judgment was entered awarding the plaintiff $8,415.60 in actual damages and $25,246.80 in punitive damages. Id. In attempting to have this judgment vacated, Palmetto Ice Company argued that it was not an entity that was capable of being sued and that any judgment against it was void. Id. at 238, 399 S.E.2d at 781. The defendant argued that the actual corporate entity was "P& H Company, Inc.," and "Palmetto Ice Company" was

merely a trade name. Id. The trial judge allowed the default judgment to be amended to substitute the name of P & H Company, Inc. as the defendant. Id. On appeal, the defendant argued that this was error, but the South Carolina Supreme Court disagreed, reasoning that Helmly, who is the principal shareholder and president of P & H Company Inc. was served with the summons and complaint and all other notices. Id. Helmly knew that Tri-County intended to sue the corporation, P & H Company, Inc., but that TriCounty was under a misapprehension as to the identity of Palmetto Ice Company. Id. Helmly was also aware that Tri-County had no way of ascertaining that Palmetto Ice Company was a trade name, as P & H Company, Inc. had not registered this assumed name with the Secretary of State. Id. Helmly did not come forward to correct the misnomer, but chose to ignore it and rely on it to attack the validity of the judgment. Id. at 240-41, 399 S.E.2d at 127. Thus, the Supreme Court held that "the amendment was not so extensive as to substitute a new defendant, but was merely a correction of a clerical mistake in the name of the corporation. It is clear that P & H Company, Inc. and its president, Helmly, have not been misled to their prejudice as to the nature of the lawsuit." Id. In the case of Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326 (1939), judgment was entered against "Carolina Baking Company" stemming from a trucking crash. On appeal, the company argued that the judgment against it was not binding, as "[i]n 1935 it transferred its assets to Columbia Baking Corporation and was dissolved." Id. at 331. The Supreme Court nevertheless held that as to the company that "acquired the assets formerly owned by the corporation whose corporate name was Carolina Baking Company, and continued to do business in that name as a trade name . . . the verdict and judgment against Carolina Baking Company is binding upon the existent corporate entity and its assets, by whatsoever name it may be known or called. The corporate fiction and the rules surrounding

it have been of inestimable service in the affairs of business, but they must be applied in such a manner as to promote justice, not to hinder or defeat it." Id.

Finally, in Englert, Inc. v. Leafguard USA, Inc., 365 S.C. 565, 619 S.E.2d 12 (2005), the plaintiff was granted partial summary judgment against "Leafguard USA, Inc.," and it was ordered that the plaintiff had the right to repurchase a gutter-fabricating machine from Leafguard. On appeal, Leafguard based its argument "on the spurious corporate formality that it was Seamless Gutters who initially purchased the Machine and not LeafGuard USA." Id. at 14. Seamless Gutters was the party to a 1993 agreement under which the machine was originally purchased, but the owner of Seamless Gutters incorporated LeafGuard USA thereafter, which actually used and possessed the machine. Id. In rejecting the technical argument that the wrong defendant was named, the Supreme Court held:

> In the present case, the parties to both the 1993 and 1999 contracts were the same, save for Vickory's use of a different corporate name. The record reflects that the parties were aware that LeafGuard USA was using the same gutter-fabricating machine sold to Seamless Gutters in 1993 and that they considered the 1998 agreement a continuation of the prior contract. We find no prejudice to the appealing company, whether called Seamless Gutters or LeafGuard USA, in Englert's failure to employ all of its corporate designations in the present lawsuit. LeafGuard USA, who is admittedly in possession of the Machine, is therefore required, under the unambiguous terms of the 1993 and 1999 contracts and regardless of the future success of its counterclaims, to sell the Machine to Englert for the agreed upon price.

Id.; accord H & H Glass Co., Inc. v. Wynne, 289 S.C. 389, 346 S.E.2d 523 (1986) (holding that where the actual name of the company was "H& H Glass of Bluffton, Inc.," "[t]he failure of Glass Inc. to use the phrase 'of Bluffton' in its name in the complaint does not render the action a nullity"); Lee v. Storfer, 159 S.C. 70, 156 S.E. 177 (1930) (holding that where a summons named the defendant as "S.J. Storfer" instead of "J.F. Storfer," the defendant had

been sufficiently identified and "[t]he objection made to the service was entirely technical, and the tendency of the courts is now properly in the direction of disregarding mere technicalities").

The Defendant was not misled by the name discrepancy. It knew to turn this over to its insurance company, and the insurance company took action to defend the Defendant – until it decided not to do that anymore. The Defendant could very easily have put in an answer that stated it was answering to the extent that it is the entity to which the suit was directed – but, bafflingly, it did not. (R. p. 163 ln. 25 through p. 164 ln. 5.) The Defendant created all of the confusion about what its name is and knew it was the party being sued. (R. pp. 188-205, 211-13, 232-39, 269-73, 278-301, 304-06, 361-65.) The Defendant is stuck with its decision not to plead the misnomer in an answer, which the law indicates is what it should have done, Tri-County Ice and Fuel, 303 S.C. at 240; H&H Glass, 289 S.C. at 391; Tunstall, 160 S.C. at 563, and instead to default the complaint and suffer default judgment. The circuit court does not sit to put litigants in the position they would have been in had they chosen to do the opposite of what they did.

Not only was the Defendant not misled here, the Defendant offered no evidence to the effect that it had been misled. The Defendant chose to play a game of trying to litigate the case without pleading in response to the complaint, staking everything on a tiny, non-confusing name discrepancy. "A suit at law is not a children's game[.]" Englert, 365 S.C. at 565. If the process served on a defendant "names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else." Id.

The Defendant made its bed, but the circuit judge below decided, against all this state's controlling precedent, that the Defendant does not have to lie in it. His decision to deny the

motion to amend the judgment was controlled by an error of law. It is error, an abuse of discretion, and the law requires it to be reversed.

II. The decisions on the other motions fall like dominoes when the denial of the motion to amend the judgment topples.

The circuit court's decisions on the other motions before it depended completely on its decision on the motion to amend the judgment, as its order makes plain. (R. pp. 4-11.) As Judge Gibbons observed at the hearing and as all the lawyers understood, a grant of the motion to amend the judgment would have required denial of the Defendant's motions and grant of the Plaintiff's. And that part of his reasoning is correct. Since the decision to deny the motion to amend the judgment was reversible error, controlled by an error of law, reversal of his decisions on the other motions is dictated by reversal – the only correct decision – of his ruling on the motion to amend the judgment. No further analysis is needed. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

III. Inconveniently or not, the special referee, not the circuit judge, had subject matter jurisdiction to hear these issues.

The record here reveals – through the fault of neither party nor the judge – a lack of subject matter jurisdiction. The special referee had the subject matter jurisdiction to hear and decide what Judge Gibbons heard and decided. The order that appointed the special referee referred the case to her "to take testimony and direct entry of final judgment in this action as to [the Defendant] under Rule 53 of the South Carolina Rules of Civil Procedure, and all matters arising from or reasonably related to such action as to [the Defendant,]" and it provided that she "shall retain jurisdiction to perform all necessary acts incident to this action as to [the

Defendant]. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the judgment as to Southern, any action necessary to enforce the judgment, and any motions or actions to set aside Entry of Default or Default Judgment as to [the Defendant] pursuant to the South Carolina Rules of Civil Procedure, including but not limited to Rule 60(b)." (R. pp. 20-21.) It is hard to see such a reference as not including the motion to amend the judgment and all related matters. Respectfully to the special referee, absent an order, she cannot simply terminate the reference to her.

Accordingly, subject matter jurisdiction was with the special referee. "A master's [or special referee's] authority to determine issues referred to him by the circuit court is a question of subject matter jurisdiction[.]" Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 74-75, 773 S.E.2d 607, 616 (Ct. App. 2015); accord Bunkum v. Manor Properties, 321 S.C. 95, 99, 467 S.E.2d 758, 761 (Ct. App. 1995) (question concerning scope of master's authority under order of reference was "issue[] relating to subject matter jurisdiction"); Bonney v. Granger, 292 S.C. 308, 322, 356 S.E.2d 138, 147 (Ct. App. 1987) ("[b]y consenting to an order of reference without limitation, [the appellant] submitted to the master's subject matter jurisdiction to the same extent as if the matter were before the circuit court"). "When a case is referred to a master [or special referee], Rule 53(c) gives the master [or special referee] the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers." Deep Keel, 413 S.C. at 75 (quoting Smith Cos. of Greenville, Inc. v. Hayes, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993)). "Once an action is referred, the master [or special referee] possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter." Normandy Corp. v. S.C. Dept. of Transp., 386 S.C. 393, 688 S.E.2d 136, 142 (Ct. App. 2009).

Judge Gibbons lacked subject matter jurisdiction to rule on the motions he heard. The parties were at a loss, in light of the special referee's stance, to do much else than show up when the motions were set before him and argue them; however, that did not vest him with subject matter jurisdiction, which remained with the special referee.

An order issued without subject matter jurisdiction is a complete nullity and is without legal effect. E.g., Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659 (Ct. App. 2002). For lack of subject matter jurisdiction, Judge Gibbons' ruling must be reversed.

CONCLUSION

The appealed order here was wrong on the substance, but it was also issued in the absence of subject matter jurisdiction.

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March 20, 2025

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APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Judge

Appellate Case No. 2023-001980

Jenna Robbins,..……...……...……...……...……...Appellant,

v.

Imfi3, LLC, D/B/A The Indigo At Cross Creek, Taft Management Group, Taft Family Ventures, and Southern-EEZ Landscaping, LLC, and Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping,

Of whom Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping is the……...……...Respondent.

CERTIFICATE OF COUNSEL
REGARDING COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

Signature page follows

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Of whom Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping is the……...……...Respondent.

PROOF OF SERVICE

I certify that I have served the foregoing final brief on the date given below by emailing it to all opposing counsel of record at the address(es) noted below.

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