

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

JUDGMENT IN A CIVIL CASE
CASE NO. 2022CP2301702

James Loper et al
PLAINTIFF(S)

John Dolan
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:

See Page 2 for Court's Order

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 07/18/2024 .

RECEIVED

APR 10 2025

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-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.

Defendant John Dolan has moved to Vacate the Judgment entered on August 15, 2023 and Defendant's Motion was heard on July 17, 2024. In support of his Motion, the Defendant argues that he was not properly served and therefore, any subsequent default Judgment is void. Based on the Affidavit of Service filed on May 11, 2024, the Defendant was served on May 7, 2022 at 104 Fawn Ridge Way, Mauldin. First, the Court recognizes that an Affidavit of Service is "prima facie evidence of the facts stated therein" although it may be attacked by extrinsic evidence. See *MMC Financial Services, Inc. v. Duffel*, 265 S.C. 519 (1975). This Defendant as set forth in his affidavit, claims that he was not served, did not live at the address where service was effected, does not meet the description of the person served and knew nothing about the lawsuit. He also submits an affidavit from his fiancée confirming that he would have been at a job location at the date and time of the purported service. In opposition, Plaintiff established that this Defendant was connected to this property in that it was his previous address and he still had contact with the property since his sister purportedly lived there. Based on the Affidavit of Service, the person served confirmed that he was Defendant Dolan at the time of the service. Further, Plaintiff submitted an affidavit from Plaintiff's counsel's paralegal that shortly after the Defendant was purportedly served, she received a written note from John Dolan acknowledging receipt of the complaint and indicated that he was "seeking legal council[sic]". This Defendant admits that his sister lived at this address at the time of the purported service and he would still have had contact with this address, but there is no affidavit or information from his sister or other resident of this house at the time to support any alternative theory. This Defendant has raised some questions about the service, but has not met his burden of establishing that he was not served as supported by the Affidavit of Service. To accept the Defendant's position, the Court would have to find that someone was impersonating the Defendant or perpetrating a fraud on him, but there is no evidence of this. Therefore, the Court upholds the Default as indicated by the Affidavit of Default filed on June 15, 2022.

As a separate issue, the Court finds that this Defendant was not provided with Notice of the damages hearing held on August 2, 2023 as required by Rule 55(b)(2). Based on the record, the Notice of the Damages hearing was sent to 104 Fawn Ridge Way, Mauldin. The Defendant established that not only was he not living there at the time of the Notice, but his sister was no longer living there and he had no connection with this address. Therefore, the Court finds that he would not have gotten any notice of the damages hearing. Therefore, the Court, already confirming the Default, sets aside the Default Judgment and orders that a new hearing be scheduled with proper notice to this Defendant's attorney. This hearing will only be for the purpose of establishing damages as provided by Rule 55(b)(2).

It is so Ordered.



Greenville Common Pleas

Case Caption: James Loper , plaintiff, et al vs. Joshua S Fernandez , defendant, et al
Case Number: 2022CP2301702
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755