

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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**APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS**

**JUDGE PERRY M. BUCKNER, 14<sup>TH</sup> CIRCUIT**

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**CASE # 2002-CP-18-932**

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**RENE McMASTERS.....Respondent**

**Vs.**

**HOWARD W. CHARPIA.....Appellant**

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**FINAL BRIEF**

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Summerville, SC 29485  
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**AUG 29 2013**

**SC Court of Appeals**

## TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal..... 1

Statement of the Case.....1 , 2

Facts.....3 ,4

### Arguments

1. The Court erred in violating the Appellants 14<sup>th</sup> Amendment rights of the “due process clause”.
2. The Court erred in not issuing a detailed Order reflecting its findings of fact and conclusions of law.
3. The Court erred in violating Chief Justice Toal’s Order of June 2008.
4. The Court erred in failure to follow its statutory rules set forth by legislature and by the State.
5. The Court erred in violating Rule 60 , SCRPC .
6. The Court erred in violating Rule 59 , SCRPC.
7. The Court did not comply with the rule that these issues should be decided with a full and complete record.

Conclusion.....5

## TABLE OF AUTHORITIES

**Chastain v. Hiltabidle , 381 S.C 508 , 673 S.E. 2d 826 ( Ct. App. 2009)**

**Holden , S.C. 319**

**Grannis v. Ordean , 234 S.C. 1914**

**Tyron Fed. Sav. V. Phelps , 307 S.C. 361 1992**

**White , 328 SC 1997**

**S.C. Dep't Social Services v. Beeks , 325 S.C.**

**Cameron & Barkley Co. v. South Carolina Procurement Review Panel , 317 S.C. 437 , 454 S.E 2d 892 (1995)**

**Webster v. Clanton , 259 S.C 387 , 391 192 S.E. 2d 214 (1972)**

**Moore v. Moore , 376 S.C. 467, 657 S.E. 2d 743 (2008)**

## STATEMENT OF ISSUES ON APPEAL

1. Did the Court err in violating the Appellant's 14<sup>th</sup> Amendment Rights of the "due process clause" ?
2. Did the Court err in not issuing a detailed Order reflecting its Findings of fact and conclusions of law ?
3. Did the Court err in violating Rule 60 , SCRPC ?
4. Did the Court err in violating Rule 59 , SCRPC ?
5. Did the Court err in not complying with the "rule" that these Issues should be decided with a full and complete record ?

## STATEMENT OF THE CASE

Chief Justice Jean Toal assigned this case , # 2002-CP-18-932 to Judge Perry Buckner in June 2008 by Order of the Supreme Court . The Appellant made a Motion for a new Trial , pursuant to Rule 60 , Rule 59 , SCRPC and the laws of South Carolina. Judge Buckner signed an Order on June 26, 2012 denying the Appellants Motion for a New Trial. In his Order , Judge Buckner states that this matter has been appealed And the remittitur has been sent to Dorchester County on March 11, 2011.

This matter , said Motion for a New Trial , filed June 2012 with the Dorchester County Clerk of Court has not been heard. How may a Remittitur be sent on March 11 , 2011 and the Motion was not filed until June 2012 ? (Order signed by Judge Buckner , exhibit # 1)

In *Webster v. Clanton* , 259 S.C. 387 , 391 (1972) , the Supreme Court held :

It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in Court , or opportunity to be heard , and that without due notice and opportunity to be heard a Court has no jurisdiction to adjudicate such personal rights.

Judge Buckner also states in his Order of June 26, 2012 , that the Court has reviewed the November 4, 2008 Order of Judge Roger Young. Judge Young's Order ( a letter not an Order ) is dated November 4, 2008, five months after Chief Justice Jean Toal signed an Order transferring said case to Judge Perry Buckner , thus relieving Judge Young of all authority to rule *or* render any findings on this case.

The Court did not comply with the rule that these issues should be decided with a full and complete record .

Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009).

## FACTS

Appellant Charpia made a Motion for a New Trial in June 2012 . Motion was filed was the Dorchester County Clerk of Court and all fees were paid . Appellant received an Order signed by Judge Buckner on July 3, 2012 , said Order was dated June 26, 2012.

Order by Buckner dated June 26 , 2012 does not address the Appellants Motion for a New Trial . The Order only directs the Clerk's office *not to file anymore motions in this case.* (Order of June 26, 2012)

Appellant believes that no Judge has the authority to violate a persons right to "due process":

The requirements of "due process" not only include notice , but also include an opportunity to be heard in a meaningful way and judicial review. ( Grannis v. Ordean , 234 S.C. 1914 )

Procedural "due process" requires notice and the opportunity to Be heard. ( Cameron & Barkley Co. v. SC Procurement Panel , SC 317)

Due process requires the opportunity to be heard at a meaningful time and in a meaningful manner. ( Holden , 319 S.C. )

It is fundamental that no judgment or Order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected. ( Tyron Fed. V. Phelps , 307 S.C. 1992)

**In Moore v. Moore , 376 S.C. 467 , 657 S.E. 2d 743 (2008) ; The Court reversed the Court of Appeals opinion. It states that:**

**Procedural “due process” requires (1) adequate notice ; (2) adequate opportunity for a hearing , (3) the right to introduce evidence and (4) the right to confront and cross-examine witnesses.**

**Appellant Charpia was never allowed his day in Court pursuant to the rules and laws of South Carolina and the Court. Rule 59 , SCRPC ; A New trial may be granted to all and any of the parties and on all or part of the issues (1) in an action in which there has been a jury trial, for any of the reasons for which new trials have heretofore been granted in actions at law in the Courts of the State.**

**Judge Buckner’s Order is incomplete and ambiguous , set forth neither findings of fact *nor* conclusions of law , fails to set forth the Court’s reasoning for its rulings.**

**The Appellant was prejudiced by the Judges ruling (s). By the actions of the Court and Judge Buckner , the Appellant was not allowed to advance his case pursuant to the laws of South Carolina.**

## CONCLUSION

Rule 60 , SCRPC does not limit the power of the Court to entertain an independent action to relieve a party from a judgment, order , or set aside a judgment for “fraud upon the Court’. There is no statute of limitations when a party seeks to set aside a judgment due to “fraud upon the Court”.

Clearly, the Appellants “due process” has been violated, The “due process clause” demands notice reasonably calculated under all circumstances , to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

WHEREFORE, the Appellant prays that this Court look into this matter and reverse Judge Perry Buckner’s Order and ruling (s). The Appellant prays that this Court grant him a New trial pursuant to the Rules and laws of South Carolina and his constitution.

  
Howard W. Charpia  
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Summerville, SC 29485  
843-873-0976



**The Supreme Court of South Carolina**

Rene' McMasters, Plaintiff,  
v.  
Charpia Residential, Defendant.  
Dorchester County  
2002-CP-18-0932

FILED-RECORDED  
2002 JUN 10 PM 7:10  
CHERYL ESTERMAN  
CLERK OF COURT  
DORCHESTER COUNTY

Ruby M. Byrd, Plaintiff,  
v.  
Palmetto Traditional Homes, LLC, Defendant.  
Dorchester County  
2006-CP-18-1626R

Sherwin Williams Company, Plaintiff,  
v.  
Martin A. Giorgi d/b/a Excellence Painting, Defendant.  
Dorchester County  
2006-CP-18-1771

City of Charleston, Dorchester  
Council of Governments, Plaintiff,  
v.  
Wachovia National Bank, Defendant.  
Dorchester County  
2007-CP-18-0336

D. R. Horton, Inc., Plaintiff,  
v.  
Carolina Drywall, Inc., Defendant.  
Dorchester County  
2007-CP-18-1805

Lisa A. Mitchell, Plaintiff,  
v.  
Kb Home, Defendant.  
Dorchester County  
2007-01-10-1031

Wayne Charpia, Plaintiff,  
v.  
Dr. James Spearman, Defendant.  
Dorchester County  
2007-01-10-1222

John Gamble, Plaintiff,  
v.  
Thomas Myers, Sr. Defendant.  
Dorchester County  
2007-01-10-2401

H. Wayne Charpia, Plaintiff,  
v.  
Rutherford Smith, Defendant.  
Dorchester County  
2007-01-10-1107

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**ORDER**

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The above matters are pending in Dorchester County. The Honorable Diane S. Goodstein, Chief Judge for Administrative Purposes, has recused herself and cannot act as Chief Judge for Administrative Purposes to administer these cases. Therefore,

IT IS ORDERED that the Honorable Perry M. Buckner be assigned as Chief Judge for Administrative Purposes in the First Judicial Circuit for the sole purpose of

administering these cases and preparing them for trial.

IT IS SO ORDERED.

S/Jean Hofer Toal

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Jean Hofer Toal  
Chief Justice

JUNE 8, 2008  
Columbia, South Carolina

JUNE 2008

THE STATE OF SOUTH CAROLINA  
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RENE McMASTERS.....Respondent

Vs.

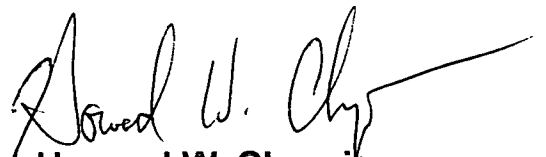
HOWARD W. CHARPIA.....Appellant

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CERTIFICATE OF COUNSEL

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I, Howard W. Charpia , hereby certify that this Final Brief ; to the best of my knowledge , complies with Rule 211 , SCACR . This day August 28 , 2013 .



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PROOF OF SERVICE

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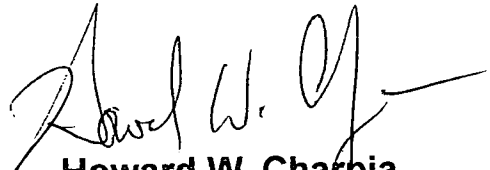
I, Howard W. Charpia , hereby certify that I mailed the FINAL BRIEF  
to Attorney Frank M. Cisa and the South Carolina Court of Appeals on  
August 28 , 2013 . Attorney Cisa for Respondent .

I certify that this brief complies with Rule 211 , SCACR to the best of  
my knowledge.

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SC Court of Appeals



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