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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2022-CP-23-01702
Appellate Case No. 2025-000622

James Loper and Lauren Loper,

Respondents,

v.

John Dolan,

Appellant.

RECORD ON APPEAL

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FORM 4

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 .

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.

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

Electronically signed on 2024-07-18 10:55:06 page 3 of 3

ELECTRONICALLY FILED - 2024 Jul 22 9:03 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2301702

FORM 4

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)

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- 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

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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.

This matter came before the Court for a damages hearing against Defendant John Dolan on February 14, 2025. Plaintiffs were represented by Ra'na Heidari and Defendant Dolan represented by Kenneth Southerlin. On the Plaintiff's motion for damages, testimony was taken and the Court granted a Judgment by Default for the amount of \$84,144.97 in favor of the Plaintiffs and Plaintiffs' counsel will submit a more formal Order for this matter. In addition, Defendant Dolan filed a Motion pursuant to South Carolina Rule of Civil Procedure, Rule 12(b)(5) and Rule 12(b)(2) and a Request of an Evidentiary hearing pursuant to Rule 43(e). Prior to hearing the Plaintiffs' Motion for damages, the Court determined that Defendant Dolan was not entitled to a further hearing on the issues of personal service since those issues had been specifically addressed at the hearing on July 17, 2024 and ruled on in the Order issued on July 22, 2024. The issue of personal service was one of the primary issues addressed at the hearing and Order and Defendant Dolan's Motion was supported by several affidavits, all of which were considered by the Court in rendering its ruling as set out in the July 22, 2024 Order. Defendant Dolan filed a timely Motion for Reconsideration which was denied by Order issued August 5, 2024. Therefore, the Court has previously addressed the specific issues raised in this Defendant's current Motions and finds that he is not entitled to another "bite at the apple" by way of another hearing. Therefore, Defendant Dolan's Motions are denied.



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

Electronically signed on 2025-02-14 13:27:43 page 3 of 3

ELECTRONICALLY FILED - 2025 Feb 14 2:58 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2301702

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

IN THE COURT OF COMMON PLEAS

James and Lauren Loper,

Plaintiffs,

v.

John Dolan,

Defendants.

C. A. No.: 2022-CP-23-01702

**ORDER AWARDING
DAMAGES**

This matter came before the Court on February 14, 2025, for a default damages hearing to determine the appropriate damages owed by Defendant John Dolan to Plaintiffs following Defendant Dolan's default. The hearing was conducted pursuant to the Court's prior order denying Defendant Dolan's Motion to Vacate Default Judgment, as well as his subsequent Motion for Reconsideration, and directing that a hearing be held to determine the appropriate amount of damages.

Plaintiff James Loper appeared at the hearing, represented by counsel, Ra'na Heidari, Esq. Defendant John Dolan also appeared, represented by counsel, Kenneth G. Southerlin, Jr., Esq. Plaintiffs called Bo Armfield of Cantey Foundation Specialists to testify regarding the extent of the structural damage to Plaintiffs' home, the necessity and cost of repairs, and the financial impact incurred as a result. Plaintiffs also introduced documentary evidence, including repair estimates, invoices, and reports detailing the damages and necessary remediation. Defendant, through counsel, cross-examined both Plaintiff and Plaintiffs' witness and argued that certain repair costs were unnecessary.

After considering the testimony, documentary evidence, and arguments presented by both parties, the Court finds that Plaintiffs have sufficiently established their damages.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

- i. Plaintiffs are awarded damages in the amount of Eighty Four Thousand One Hundred Forty-Four and 97/100^{ths} Dollars (\$84,144.97).
- ii. This award reflects the costs of necessary repairs, structural stabilization, and related expenses incurred due to the concealed damage at the Plaintiffs' home.
- iii. The Clerk of Court shall enter judgment in favor of the Plaintiffs in the amount of \$84,144.97 against Defendant John Dolan.

IT IS SO ORDERED.

Electronic Signature to Follow



Greenville Common Pleas

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

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2025-03-04 13:01:39 page 6 of 6

ELECTRONICALLY FILED - 2025 Mar 05 11:20 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2301702

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Loper and Lauren Loper,)
)
)
Plaintiffs,)
)
)
vs.)
)
Joshua S. Fernandez, Kelly C.)
Fernandez, John Dolan, Chris)
Loper, Lynda Sams, and Keller)
Williams Greenville Upstate)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2022-CP-_____

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY summoned and required to answer Plaintiffs' Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at, P.O. Box 1804 Greenville, South Carolina, 29602, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer within the time aforesaid, Plaintiffs in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC

s/ M. Stokely Holder

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Attorneys for Plaintiffs

April 1, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 James Loper and Lauren Loper,)
)
 Plaintiffs,)
)
 vs.)
)
 Joshua S. Fernandez, Kelly C.)
 Fernandez, John Dolan, Chris)
 Loper, Lynda Sams, and Keller)
 Williams Greenville Upstate)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH JUDICIAL CIRCUIT
 Civil Action No.: 2022-CP-_____

**COMPLAINT
 (Jury Trial Demanded)**

Plaintiffs, James Loper and Lauren Loper, complaining of Defendants Joshua S. Fernandez; Kelly C. Fernandez; John Dolan; Chris Loper; Lynda Sams; and Keller Williams Greenville Upstate (collectively, “Defendants”), and respectfully show unto this Court as follows:

1. Plaintiffs are citizens and residents of the County of Greenville, State of South Carolina who the current owners of the property at issue, which is known as 203 Westfield Avenue, Greer, South Carolina 29651 (the “Property”).
2. Upon information and belief, Defendants Joshua S. Fernandez and Kelly C. Fernandez (“Sellers”) are married and are citizens and residents of the County of Greenville, State of South Carolina who are the previous record owners of the Property at issue.
3. Upon information and belief, Defendant John Dolan (“Dolan”) is a citizen and resident of the County of Greenville, State of South Carolina who, at all pertinent times mentioned herein, was a licensed general contractor.

4. Upon information and belief, Defendant Chris Loper (“Loper”) is a citizen and resident of the County of Greenville, State of South Carolina who, at all pertinent times mentioned herein, was a licensed real estate agent, and under the employ of Defendants Keller Williams and Sams.

5. Upon information and belief, Defendant Lynda Sams (“Sams”) is a citizen and resident of the County of Greenville, State of South Carolina who, at all pertinent times mentioned herein, was a licensed real estate broker for Defendant Keller Williams responsible for the employ and supervision of Defendant Loper.

6. Upon information and belief, Defendant Keller Williams Greenville Upstate (“Keller Williams”) is a Texas company who, at all pertinent times mentioned herein, was conducting business in Greenville County, South Carolina, under whose purported ownership, brokerage, employ, and management were Defendants Sams and Loper (Keller Williams, Sams, and Loper, collectively, hereinafter, the “Agent Defendants”).

7. Venue and jurisdiction are proper in this Court.

FACTUAL HISTORY

8. Plaintiffs purchased the subject Property from Sellers on or about April 2, 2019, for the purchase price of Two Hundred Thirty-Seven Thousand and no/100 Dollars (\$237,000).

9. Plaintiffs retained Agent Defendants to assist them with the purchase of the Property.

10. Pursuant to the terms of the purchase agreement (“Agreement”), Sellers agreed to provide a South Carolina Residential Property Condition Disclosure Statement (“CDS”) and the sale was contingent upon the issuance of a CL-100 for the Property.

11. Plaintiffs specifically requested Defendant Loper to act as the agent for the purchase as he is the brother of Plaintiff James Loper. Lynda Sams was the assigned broker in charge for the transaction and responsible for supervising Loper.

12. An inspection of the Property was conducted as due diligence prior to closing of the Property. The inspection report (“Report”) indicated that there were several troublesome issues, including issues with the foundation and crawl space, improper electrical work, improper drainage, unlevel and sloping floors in multiple areas, areas of water penetration, and others.

13. Plaintiffs requested that Sellers retain a general contractor to assess the issues and recommend necessary repairs. Sellers retained Defendant Dolan as he had previously done work on the house for Sellers. Despite the issues outlined in the Report, Dolan indicated that there were no structural issues, and no repairs were necessary.

14. Agent Defendants were aware of the Report and the issues that it outlined; however, they did nothing to force Sellers to make the necessary repairs or advise Plaintiffs to reconsider the purchase.

15. Soon thereafter, a termite inspection was conducted at the Property. The termite inspection revealed that there were several areas of active termite infestation located on the Property. This inspection also indicated that there was visible evidence of damage to the wooden structures under the home, including, but not limited to, the floor joists and support beams at or near the front porch and throughout the crawlspace. It also noted that there were some areas on the Property that were blocked by a vapor barrier that was in place.

16. Once again, Agent Defendants did nothing to force Sellers to make the necessary repairs or advise Plaintiffs of the extent of the termite damage to the structure of the Property.

17. As stated previously, the purchase agreement also required that Sellers would provide a completed CDS. Sellers partially completed a CDS but left blank the section disclosing wood destroying insects.

18. Section IV of the CDS requires disclosure of “Present or Past Infestation of Wood Destroying Insects or Organisms or Dry Rot or Fungus, the Damage from Which Has Not Been Repaired.” This section was left completely blank by Sellers despite considerable termite issues being present during Sellers’ ownership of the Property.

19. Following the sale, Plaintiffs consulted with a contractor who noted that there were several support structures that were severely damaged by termites, including multiple girders, a band joist, and other structural components that were damaged beyond repair.

20. The termite issues were evident during the ownership of Sellers, and they were aware of these issues, yet they completely failed to disclose these issues as required by the CDS.

21. Agent Defendants did nothing to ensure that Sellers complied with the CDS requirements and did nothing to advise Plaintiffs that the CDS had been complied with.

22. Agent Defendants did not conduct any additional investigation into these issues despite being aware of the severe defects. Agent Defendants never consulted with a licensed, qualified expert to assess these issues and properly advise their clients, Plaintiffs, of the severity of the Property’s condition.

23. As a direct and proximate result of Defendants’ actions, Plaintiffs have been left with a home with substantial defects and other issues that severely impact the structure and habitability of the Property.

24. As a direct and proximate result of Defendants' actions, Plaintiffs now must repair the home to an extent they were not aware prior to closing.

25. Plaintiffs have received an estimate of Thirty-Nine Thousand Seventy-Nine and no/100 Dollars (\$39,079.00) to repair the Property. The costs of repairs are likely to exceed this estimate due to significant repairs that must also be completed to the crawlspace of the Property.

FOR A FIRST CAUSE OF ACTION
(Fraud – Agent Defendants)

26. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

27. Agent Defendants knew or should have known of the false representations, including material omissions, made/provided to Plaintiffs including, but not limited to, the false representation by Dolan that there were no structural issues that required repairs, the condition of the property, and Sellers' failure to disclose the termite damage on the CDS (the "Misrepresentations").

28. The Misrepresentations made/issued by Agent Defendants were material to the transaction involving Plaintiffs.

29. The Agent Defendants knew or should have known of the fraudulent nature of the Misrepresentations.

30. Agent Defendants intended for the Plaintiffs to act in response to the fraudulent Misrepresentations and statements; namely, close on the purchase of the Property so that the Agent Defendants could get paid from the proceeds.

31. Plaintiffs were unaware of the fraudulent nature of Agent Defendants' Misrepresentations, Plaintiffs had a right to rely upon information provided by Agent Defendants because of the specific legal duties owing by Agent Defendants to Plaintiffs, including, without limitation, fiduciary duties; and Plaintiffs did in fact rely upon Agent Defendants' Misrepresentations.

32. As a direct and proximate result of Agent Defendants' willful, wanton, and reckless conduct, Plaintiffs have suffered actual, consequential, punitive, and special damages in an amount to be determined by a jury at trial, together with costs, interest, and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Constructive Fraud)

33. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

34. Agent Defendants impliedly and/or expressly represented, or misrepresented, the condition of the Property, the extent of the termite damage, and the structural damage to the Property to Plaintiffs.

35. The Misrepresentations were false.

36. Agent Defendants knew or should have known of the falsity of the Misrepresentations.

37. The Misrepresentations were material as they induced Plaintiffs to enter into the contract and then close of the purchase of the Property.

38. Agent Defendants fully intended that the Misrepresentations be acted upon by Plaintiffs.

39. Plaintiffs were ignorant of the falsity of the Misrepresentations.

40. Plaintiffs reasonably relied on the Misrepresentations and had a right to rely upon the Misrepresentations.

41. As a direct and proximate result of Agent Defendants' willful, wanton, reckless, conduct, Plaintiffs have suffered actual, consequential, punitive, and special damages in an amount to be determined by a jury at trial, together with costs, interest, and attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Negligence – Agent Defendants)

42. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

43. Agent Defendants owed duties to Plaintiffs, including, but not limited to:

- a. Adequately supervise its employees and associated licensee to ensure their compliance with South Carolina law, to include, without limitation, compliance with the duties listed hereunder;
- b. Maintain adequate, reasonable, and regular contact with associate licensees engaged in real estate transactions to prevent or curtail practices by a licensee which would violate South Carolina law, to include, without limitation, violation of the duties listed hereunder;
- c. Ensure the proper provision, use, review, and approval of all forms of routinely used real estate contractual documents, to include, without limitation, South Carolina Residential Property Condition Disclosure Statements, as well as contract agreements;
- d. Duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting in accordance with South Carolina law;
- e. Promote the interests of the buyer by performing the duties imposed upon buyer's agents by South Carolina law;
- f. Disclose to the buyer all relevant facts concerning the transaction which actually known to the license holder or, if acting in a reasonable manner, should have been known to the license holder;

- g. Advise the buyer to obtain expert advise on material matters that are beyond the expertise of the license holder;
- h. Exercise reasonable skill and care in discharging the licensure's duties;
- i. Truthfully disclose material defects to the Property that were known or should have been known to the license holder;
- j. Not to make intentional misrepresentations in response to direct inquiry from a buyer regarding conditions associated with the real estate; and
- k. Be fair and honest and provide accurate information in all dealings.

44. Agent Defendants willfully, wantonly, and recklessly breached the aforesaid duties owed to Plaintiffs.

45. As a direct and proximate result of Agent Defendants' willful, wanton, reckless conduct, Plaintiffs have suffered actual, consequential, punitive, and special damages in an amount to be determined by a jury at trial, together with costs, interest, and attorney's fees.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty – Agent Defendants)

46. Plaintiffs incorporate the allegations of the foregoing paragraphs as if fully repeated verbatim.

47. Plaintiffs reposed special confidence in Agent Defendants so that Agent Defendants would represent Plaintiffs in equity and good conscience, to undertake their duties described above in equity and good conscience, and to be bound to act in good faith and with due regard to the interests of Plaintiffs.

48. Agent Defendants breached their fiduciary duties to Plaintiffs by failing to satisfy their duties as described hereinabove.

49. As a direct and proximate result of the willful, wanton, and reckless breach by Agent Defendants of their fiduciary duties to Plaintiffs, Plaintiffs have suffered actual, consequential, punitive, and special damages in an amount to be determined by a jury at trial, which are hereby prayed for, together with interest, costs, and attorney's fees.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract – Sellers)

50. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

51. Plaintiffs and Sellers entered into a binding contract for the sale of the Property that obligated Sellers to act in good faith and deal fairly with Plaintiffs.

52. Sellers breached the contract by failing to act in good faith when Sellers intentionally failed to disclose material facts about the condition of the Property.

53. As a direct and proximate result of Sellers' breach of contract, Plaintiffs have suffered actual and consequential damages in an amount to be determined by a jury at trial, together with interests and costs.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act – Sellers)

54. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

55. Plaintiffs and Sellers entered into a binding contract for the sale of the Property.

56. Sellers fraudulently breached the contract by intentionally failing to disclose their knowledge of the termite damage to the Property.

57. In accompaniment with the breach by Sellers, they exhibited dishonesty in fact, unfair dealing, and the unlawful appropriation of Plaintiff's monies and rights, all by design, which occurred prior to, contemporaneous with, and/or subsequent to the breaches of the contract.

58. As a result of Sellers' fraudulent breach of the contract and Sellers' willful, wanton, and reckless conduct, Plaintiffs have suffered actual, consequential, and punitive damages in an amount to be determined by a jury at trial, along with costs, interests, and attorney's fees.

FOR A SEVENTH CAUSE OF ACTION
(Violation of the South Carolina Residential Property Condition Disclosure Act – Sellers)

59. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

60. During Sellers' ownership of the Property, there were existing and ongoing termite infestation issues which Sellers had knowledge of.

61. Pursuant to South Carolina Code Ann. § 27-50-10, *et seq.*, Sellers had a duty to disclose this information to Plaintiffs through their CDS in connection with Sellers' sale of the Property to Plaintiffs.

62. As a direct and proximate result of the Sellers' intentional and deceptive concealment of the condition of the Property, Plaintiffs have suffered damages and are entitled to an award of actual, consequential, and special damages in amount to be determined by a jury at trial, together with interest, costs, and attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION
(Negligence- John Dolan)

63. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

64. Dolan held himself out to Plaintiffs as a licensed, qualified, and expert general contractor who would inspect the Property for structural issues following the inspection report.

65. Dolan had also previously completed work on the Property for Sellers in or about 2018.

66. Dolan owed a duty to Plaintiffs to exercise due care in the design, construction, and repair of the Property in a good workmanlike manner, and with suitable materials, in accordance with the applicable building codes and regulations, state law, good design, and in conformance with the prevailing industry standards for the 2018 work.

67. Dolan owed Plaintiffs a duty to inspect the Property with due care following the inspection report to ensure that the Property design, construction, and structure were in accordance with applicable building codes and regulations, state law, good design, and in conformance with the prevailing industry standards and that the Property remained in good workmanlike manner and was habitable for Plaintiffs prior to closing.

68. Dolan breached these duties to Plaintiffs in a manner that was negligent, careless, reckless, willful, and wanton in the following particulars:

- a. In failing to construct and/or renovate the Property in accordance with the building code, the plans and specifications, and in good workmanship;
- b. In failing to properly coordinate and sequence the work, to include the work of subcontractors and laborers;
- c. In utilizing un- or underqualified and/or unlicensed laborers;

- d. In failing to properly supervise the work and construction of the Property;
- e. In failing to properly inspect the Property to ensure that it was in accordance with the building code and in good workmanlike condition;
- f. In failing to properly inspect the Property to ensure that it was in a habitable condition such that a reasonable person could be expected to reside in the home;
- g. In failing to make necessary repairs to the Property as identified in the inspection report.

69. Plaintiffs have been damaged in that they now must make repairs to their home they were unaware of as a direct and proximate result of the negligence, willful, wanton, and reckless conduct of Dolan.

70. As a direct and proximate result of Dolan's willful, wanton, and reckless conduct, Plaintiffs have suffered actual, consequential, and punitive damages in an amount to be determined by a jury at trial, along with costs, interest, and attorney's fees.

FOR A NINTH CAUSE OF ACTION
(Breach of Express and Implied Warranties – John Dolan)

71. Plaintiffs incorporate the allegations of the foregoing and succeeding paragraphs as if fully repeated verbatim.

72. Dolan's design and construction of the Property came with implied and express warranties that the work would be performed in a careful, diligent, and workmanlike manner and that the work done would be completed with suitable materials and free from all defects.

73. Dolan's design and construction of the Property came with implied warranties of fitness, merchantability, and workmanship, and with a warranty of habitability.

74. Dolan's inspection of the Property and the statement that it did not need structural repairs came with implied and express warranties that it would be done in a careful, diligent, and workmanlike manner.

75. Dolan's inspection of the Property and the statement that it did not need structural repairs came with implied warranties of fitness, merchantability, workmanship, and habitability.

76. Dolan has breached those warranties by constructing the Property in a defective manner. Dolan has further breached those warranties by inspecting the Property in a deficient manner and stating that it did not need structural repairs even though it clearly did.

77. Despite attempts by the Plaintiffs to have proper work performed, Dolan has refused and failed to do so, rendering any and all warranties as having failed for their essential purpose.

78. As a direct and proximate result of Dolan's breaches, Plaintiffs have suffered actual and consequential damages in an amount to be determined by a jury at trial, together with special damages, punitive damages, interest, costs, and attorney's fees.

WHEREFORE, having Complained of Defendants, Plaintiffs James Loper and Lauren Loper pray for the following relief:

1. For judgment against Defendants under the claims stated above, to include actual, consequential, special, and punitive damages;
2. For interest, attorney's fees, and reasonable costs; and
3. For such other and further relief the Court deems necessary and proper.

(signature page to follow)

HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC

s/ M. Stokely Holder

M. Stokely Holder (SC Bar #73892)

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Attorneys for Plaintiffs

April 1, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

SOUTH CAROLINA CIRCUIT COURT 13
DOCKET NO. 2022-CP-23-01702

JAMES LOPER,

Plaintiff,

v.

JOHN DOLAN,

Defendant.

H E A R I N G
BEFORE THE HONORABLE PERRY H. GRAVELY

DATE: July 17, 2024
TIME: 02:05:29
LOCATION: SOUTH CAROLINA CIRCUIT COURT 13

TRANSCRIBED BY: LYNETTE L. CHASE

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1 APPEARANCES:

2

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5 HOLDER, PADGETT, LITTLEJOHN & PRICKETT, LLC

6 PO BOX 1804

7 GREENVILLE, SC 29602

8

9 FOR THE DEFENDANT:

10 KENNETH SOUTHERLIN, ESQ.

11 UPSTATE LEGAL SOLUTIONS, LLC

12 400 S. MAIN STREET, #765

13 TRAVELERS REST, SC 29690

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NO EXHIBITS

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUITED BY THE SPEAKER.)

1 THE COURT: All right. This is defendant's
2 motion to vacate the judgment.

3 MR. SOUTHERLIN: Thank you, Your Honor. Kenneth
4 Southerlin here on behalf of defendant John Dolan. Your
5 Honor, we're asking that the judgment in this case be
6 vacated based on the fact that my client was never served in
7 this case.

8 The only reason he was able to find out about
9 this case was he was recently served with a separate case to
10 foreclose the judgment in this case. And in researching
11 this case there is a -- an affidavit of service that's been
12 filed. I'd ask the Court to take a close look at this
13 affidavit of service.

14 First of all, the address which was served,
15 104 Fawn Ridge Way in Mauldin, it's not my client's address.
16 That at the time belonged to his sister. Now, in all
17 fairness, several years earlier he did live there for a time
18 and several years earlier he did receive mail there.

19 However, as the Court can see from my client's
20 driver's license, which a copy of which is attached to his
21 affidavit, in 2020 my client's address was 13 Third Street.
22 That is the address for which the foreclosure action is
23 currently proceeding and they had no problem serving him at
24 that address in this case -- in the foreclosure case.

25 The affidavit of service indicates that they

1 never attempted to serve my client at his actual address,
2 but instead made multiple attempts to serve him at his
3 sister's address. And we are to believe that on a Saturday
4 morning at -- I believe it was 10:37 a.m. they just happened
5 to catch him visiting his sister. He has stated in his
6 affidavit he was not there.

7 Also, the affidavit indicates -- has several
8 identifiers that I would like to point out. The height on
9 the affidavit of service says my clients is five nine.
10 You'll see from his driver's license that he's actually five
11 six. The hair color on the affidavit -- let's go to the eye
12 color on the affidavit is blue. The eye color on his
13 driver's license is brown. This affidavit also states that
14 my client was married at the time of the affidavit. At the
15 time of this -- the day in question my client was not
16 married.

17 So in all of these discrepancies -- if
18 identifiers are going to be used on an affidavit of service
19 they need to mean something. And in this case I believe
20 they mean that whoever received this document was not my
21 client.

22 My client has also in his affidavit indicated
23 that he and his fiancée at the time, they were on a job site
24 on -- in another part of the county that morning. They were
25 not visiting his sister.

1 Also, notice of the final hearing in that case,
2 that hearing I believe was a damages hearing, but notice of
3 that hearing went to this 104 Fawn Ridge Way. By that point
4 his sister had sold the property and moved so there was
5 absolutely no way that he could have gotten notice of the
6 final hearing in the case.

7 And lastly, Your Honor, I want to bring to the
8 Court's attention that earlier this week an affidavit was
9 filed by -- I believe it was opposing counsel's paralegal.
10 Attached to that affidavit was this note that was
11 purportedly from my client indicating that he received
12 service and was seeking counsel.

13 First of all, is that a normal response of
14 someone who's just been served is to send a generic letter
15 to say that I have received counsel -- excuse me, I've
16 received the documents that have no type of response. In my
17 experience that's not typically what people do.

18 But also, Your Honor, just to point out. There's
19 no date on that letter. There's no address on that letter.
20 There's no signature on that letter. And that letter is not
21 referenced in any prior filing.

22 I believe that such a letter, had it been in
23 possession of opposing counsel at the time of the affidavit
24 of default and the motion of default was entered into, I
25 think there was an obligation to provide that, file that

1 with the Court to acknowledge that there had been some type
2 of communication. That hadn't -- that was not done. So
3 prior to this week this note -- the existence of this note
4 was unknown.

5 Because -- we know that the Court abhors default
6 judgments, but this situation goes beyond just a default
7 judgment. There's no service of my client in this case.
8 Without service there's no jurisdiction and it's a void
9 judgment. And based on the fact that it's a void judgment
10 we ask that you rule that it, in fact, is a void judgment
11 and allow my client an opportunity to address these issues
12 on the merit.

13 THE COURT: All right. Mr. Holder.

14 MR. HOLDER: Thank you, Your Honor. Stokely
15 Holder on behalf of the plaintiff. This is a case that was
16 filed back in April of 2022. I won't bore you with all the
17 details about the underlying merits of it.

18 Essentially it was -- centered upon a transaction
19 whereby my clients, who are seated to my left, purchased a
20 property from the defendant Fernandezes as sellers and it
21 was later determined after that closing that there was
22 nondisclosures made on behalf of the sellers and as our
23 pleadings make clear, some misrepresentations made on behalf
24 of Mr. Dolan who was used during the closing process as
25 purported construction expert and determined whether or not

1 there was issues with the construction of the home -- the
2 condition of the home for which he had actually previously
3 performed. Later we found out there were issues and
4 significant issues he, we allege, misrepresented. As a --

5 THE COURT: Let's take care of -- we're just here
6 for the --

7 MR. HOLDER: Right. I'm just letting you know
8 some background --

9 THE COURT: That would be the file.

10 MR. HOLDER: The summons and complaint
11 (inaudible) April 1, '22. We immediately went forward with
12 efforts to serve the defendants, which included, as you can
13 see here in the affidavit of service, multiple attempts to
14 serve Mr. Dolan.

15 Our records indicated from our searches that he
16 was not residing at that Third Street address. In fact, our
17 records indicated that his voter registration, which I don't
18 think they dispute, was filed as of -- or with reference to
19 that Mauldin address where he was served. And, in fact, our
20 records indicate that he voted beyond this 2018 date when
21 they appear to allege that's when he was living already at
22 this Greenville 13th Street address. We're not clear about
23 that. But in any event the voter records demonstrate that
24 he voted in the Mauldin district under this Mauldin address
25 and after this purported 2018 date when he was living at the

1 Greenville address.

2 Nonetheless, I think you have to take a step back
3 here and look at all the facts from just a mere common sense
4 standpoint. There was no -- there's no rationale or reason
5 why a process server or my office would make
6 misrepresentations to the Court about service.

7 And I think it -- again, it's not a coincidence
8 we don't think, whether they assert that or not, that this
9 process server who was a third party, no interest whatsoever
10 in the underlying litigation, makes clear in his affidavit
11 after the third attempt to serve Mr. Dolan that Mr. Dolan
12 actually answered the door and identified himself.

13 And then four days after that -- it was May 7th.
14 Four days after that May 11th, my office gets a letter in
15 the mail that is attached as Exhibit B to my paralegal's
16 affidavit that states that I received a complaint and
17 references the case number and the date and he's seeking
18 counsel.

19 I don't -- I think it's a stretch to assert that
20 somehow some way not only do we have a process server who's
21 apparently made a misrepresentation according to them and an
22 affidavit they filed with the Court, and then apparently
23 they're asserting that my office is making
24 misrepresentations about the mail that we received in my
25 office where Mr. Dolan sends us a letter acknowledging he

1 was served and he's seeking legal counsel.

2 I will note too, Your Honor, that we filed the
3 motion for the entry of default in June of that year, '22,
4 and notices or copies were sent to that same address.

5 The order was issued on the following week,
6 June 22nd. It was made -- the decision was made at that
7 point -- because there were other parties that I referenced
8 before in that litigation did not receive default judgment
9 because we were concerned that the other parties may assert
10 an empty chair defense.

11 So subsequently about a year later after
12 litigation continued against the other defendants there was
13 a mediation that took place where the case -- or the
14 remaining claims against those parties that appeared had --
15 we reached a settlement with those folks.

16 As part of the settlement, as the dismissal
17 indicates as a result of that settlement, the remaining
18 claims against Mr. Dolan were going to move forward. And as
19 an officer of the court I can attest to the fact that there
20 are settlement negotiations. It was discussed how this
21 Dolan judgment was still out there and something that all of
22 the parties actually took interest in pursuing whether by
23 assignment or direct efforts. (Inaudible) my clients. Just
24 to explain why there's that gap and then thereafter that the
25 default judgment was pursued.

1 So -- and I think it's also interesting to note
2 that the defense -- or the opposition's motion is centered
3 entirely on this idea that Mr. Dolan who somehow some way
4 was living at his -- or at his sister's house at some point
5 in time, somehow that address comes across in all the asset
6 searches you find for Mr. Dolan and yet he claims he wasn't,
7 in fact, living there.

8 But the affidavits that were presented by
9 Mr. Dolan, include his own and his fiancée's, yet there's
10 nothing that's been presented by his sister who should know
11 more than anybody else to whether or not he was, in fact,
12 residing at that location.

13 But again, I don't think you have to get there.
14 There's an affidavit on file from a process server who has
15 no interest in the underlying case clarifies that Mr. Dolan
16 actually identified himself. Then we have a letter from
17 Mr. Dolan and my office agreeing -- or acknowledging that he
18 received service.

19 So at the point we're at legally pursuant to
20 Rule 60 Rule 55 (inaudible) shows (inaudible) neglect. And
21 as the case law is clear, it's a stringent standard and we
22 don't think they can satisfy it.

23 Now, to the extent there is -- it appears as if
24 from the public records that the notice of the damages
25 hearing was served that same address after his sister had

1 moved and I guess you assume for the sake of discussion that
2 Mr. Dolan was no longer there, then I think the adequate
3 remedy would be for another judgment -- excuse me. Another
4 damages hearing to be held. But other than that, I don't
5 think this satisfied any standard to set aside the
6 underlying entry of default and I would argue they've got
7 problems with the default judgment.

8 But one more point. I don't know of a case in
9 South Carolina where entry of default has been set aside by
10 virtue of the fact -- or where there is an affidavit of
11 service that's been filed by a process server who's
12 personally served a party to the action and I think for good
13 reason. So that's all I have at this moment, Your Honor.

14 THE COURT: Any final words, Mr. Southerlin?

15 MR. SOUTHERLIN: Yes, Your Honor. We have an
16 affidavit of service that has obvious defects, obvious facts
17 that aren't true. Whether or not this individual thought he
18 served the right person, that's not in question. I'm not
19 suggesting that there was any type of fraudulent behavior on
20 part of this third-party servicer. It could very well be
21 that it was simply a mistake on his part that he served
22 somebody, but it wasn't my client and my client had no
23 knowledge of it. And as a result this is a -- there's no
24 jurisdiction. Jurisdiction hasn't been established.
25 Therefore the order, the judgment, should be void.

1 THE COURT: All right. Let me look at that in
2 light of the case law and I'll let you know what I come up
3 with.

4 MR. HOLDER: One more. Sorry to belabor. I know
5 we're behind. Just one more point I meant to raise earlier.
6 So also the (inaudible) tax records also reflect that
7 Mr. Dolan was using his sister's address for purposes of
8 receiving tax notices.

9 And, in fact, in the 2021 tax notice, that
10 property was being taxed as his non-primary residence. He
11 was being taxed at six percent. So this allusion that he
12 was living there in 2018 up through the date of service I
13 think is proven false by virtue of the fact that he
14 acknowledged with the tax assessor that this wasn't his
15 primary residence. And, in fact, he was getting notices of
16 the tax -- taxes due at his sister's address where he was
17 served.

18 MR. SOUTHERLIN: Except this was -- service took
19 place in 2022 and the tax records for '22 indicate my
20 client's actual address as the address for receiving tax
21 notices. So prior years would become irrelevant. '22,
22 that's the year of service. That's the year that we're
23 talking about here. And then that year the tax records
24 indicate that he was living at the downtown address, not the
25 address that he is purportedly --

1 THE COURT: (Inaudible) just rehash and going
2 back and forth. I'll take a look at it and let you know.

3 MR. HOLDER: All right. Thank you, Your Honor.

4 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
5 02:22:30)

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CERTIFICATE OF TRANSCRIBER

I, LYNETTE L. CHASE, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court of Greenville County, South Carolina, on the 17th Day of July, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 24, 2025



Lynette L. Chase

Transcriber

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	Case No: 2022-CP-23-01702
James Loper and Lauren Loper,)	
)	
Plaintiff,)	
)	
vs.)	
)	
Joshua S. Fernandez, Kelly C.)	
Fernandez, John Dolan, Chris)	
Loper, Lynda Sams, and Keller)	
Williams Greenville Upstate	)	Related Case Number: 2024-CP-23-01046
)	
Defendants.)	
)	

MOTION AND NOTICE OF MOTION TO VACATE DEFAULT JUDGEMENT

PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as Counsel may be heard, and pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure, Defendant will move before this Honorable Court for an order vacating the default judgment entered against Defendant in this case upon such terms as are just.

The grounds for this motion are that the default judgment was based upon an Affidavit of Service filed on May 11, 2022. The affidavit averred that personal service had been effected upon Defendant by delivering a copy of the Summons and Complaint to an individual who was 5’9”, had blue eyes, who identified himself as the Defendant, and was at 104 Fawn Ridge Way; Mauldin, SC 29662 on the morning of Saturday, May 7, 2022 at 10:37 a.m.

Service was ineffective because Defendant was not at 104 Fawn Ridge Way; Mauldin, SC 29662 on the morning of May 7, 2022, Defendant did not reside at 104 Fawn Ridge Way; Mauldin, SC 29662, and the description of the individual who allegedly claimed to be the Defendant does not match the description of the Defendant.

Such service was legally insufficient under Rules 4(d)(1) and 12(b)(2) & (5) to provide jurisdiction over Defendant. Defendant never had the legally required notice that he had been sued and did not have 30 days in which to respond before a default judgment was requested. Furthermore, Defendant never received notice of the damages hearing because the Notice of Hearing was mailed to an address that was not that of the Defendant. Defendant only received actual notice of this suit when he was served on March 23, 2024 with the Summons and Complaint in a foreclosure action (*James Loper and Lauren Loper vs. John Dolan*, 2024-CP-23-01046) based on such default judgment.

This motion is based upon the pleadings in this matter, the affidavits of John Dolan and Sharon Caulder filed contemporaneously with this motion, as well as any supporting memoranda that may be submitted by Defendant, and/or any testimony received by the Court at the hearing.

WHEREFORE, Defendant prays that his motion be granted, the Default judgment be vacated, and he be allowed to file an Answer in this case.

Respectfully submitted,

s/ *Kenneth G. Southerlin, Jr.*

Kenneth G. Southerlin, Jr.
Upstate Legal Solutions, LLC
SC Bar No. 71891
PO Box 765
Travelers Rest, SC 29690
(864) 354-6689

Dated: April 19, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	Case No: 2022-CP-23-01702
James Loper and Lauren Loper,)	
)	
Plaintiff,)	
)	
vs.)	
)	
John Dolan,	)	Related Case Number: 2024-CP-23-01046
)	
Defendant.)	
_____)	

MOTION TO RECONSIDER COURT’S ORDER DENYING DEFENDANT’S MOTION TO VACATE DEFAULT JUDGEMENT

This Motion is brought pursuant to Rule 59(b) of the South Carolina Rules of Civil Procedure. Defendant hereby moves this Honorable Court to reconsider its Order issued on July 18, 2024 denying in part Defendant’s Motion to Vacate the Default Judgment entered against Defendant.

Per said Order, one of the factors the Court considered in reaching its decision was a lack information from Defendant’s sister. Specifically the Order states: “[T]here is no affidavit or information from [Defendant’s] sister or other resident of this house at the time to support any alternate theory.” Defendant’s counsel filed an affidavit from Defendant’s sister on July 19, 2024 stating that she was the owner of the property where Plaintiff alleges Defendant was served, that the Defendant was not a resident of that house at the time of the alleged service, that the Defendant was not present at her house on May 7, 2024, and that she did not receive any mail addressed to the Defendant from Plaintiff’s attorney’s office.

In addition to the affidavit of Defendant’s sister, Defendant’s counsel has filed an affidavit from Dr. John Walton stating that Defendant was working at Dr. Walton’s property located at 4005 Blue Ridge Circle; Greer SC 29651 on May 7, 2024.

These two affidavits, coupled with the affidavits of Defendant and Defendant’s fiancée, establishes that Defendant was not served with the Summons and Complaint in this case. Furthermore, the only evidence to support Plaintiff’s position that Defendant was served are an Affidavit of Service that includes information that is patently false and a “note” allegedly from Defendant but containing no address, signature, or anything else that could verify its authenticity.

Personal service “confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.” *Fassett v. Evans*, 364 S.C.42, 47 (S.C. Ct. App. 2005). In the present case, Defendant was not served therefore the Court had no personal jurisdiction in the case, and therefore, all Orders related to Defendant are void. “Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process.” *Innovative Waste Management Inc. v. Crest Energy Partners*, 423 S.C. 611, 613 (S.C. Ct. App. 2018). Defendant requests under Rule 60(b)(4), SCRCP that this Court vacate said Orders including the Order For Entry Of Default.

WHEREFORE, Defendant prays that his motion be granted, the Default judgment and Order For Entry of Default be vacated, and he be allowed to file an Answer in this case.

Respectfully submitted,

s/ *Kenneth G. Southerlin, Jr.*

Kenneth G. Southerlin, Jr.
Upstate Legal Solutions, LLC
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(864) 354-6689

Dated: July 25, 2025

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	Case No: 2022-CP-23-01702
James Loper and Lauren Loper,)	
)	
Plaintiff,)	
)	
vs.)	
)	
John Dolan,	)	Related Case Number: 2024-CP-23-01046
)	
Defendant.)	
_____)	

MOTION TO DISMISS PURSUANT TO:

RULE 12(B)(5) INSUFFICIENCY OF SERVICE OF PROCESS

RULE 12(B)(2)—LACK OF PERSONAL JURISDICITON

AND REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO RULE 43(E)

PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter as Counsel may be heard, and pursuant to Rule 12(b)(5) and Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, Defendant will move before this Honorable Court for an order dismissing this case upon such terms as are just. Defendant also requests an evidentiary hearing to the disputed facts regarding the grounds for this motion. The grounds for this motion are as follows:

Undisputed Facts

An Affidavit of Service was filed in this case on May 11, 2022. The affidavit states that personal service had been effected upon Defendant by delivering a copy of the Summons and Complaint to an individual who was 5’9”, had blue eyes, who identified himself as the Defendant, and was at 104 Fawn Ridge Way; Mauldin, SC 29662 on the morning of Saturday, May 7, 2022 at 10:37 a.m. Said address was owned by Defendant’s sister on the date of service.

Disputed Facts

Plaintiff claims that the individual allegedly served by the affiant of the aforementioned affidavit was Defendant, thereby establishing proper service of process. Defendant claims that he was never served in this case, and he, along with his then fiancé (now wife), sister, and a third party employer, have filed affidavits stating that Defendant could not have been served because he was not at the location indicated on the affidavit but rather at a different location on that date. Plaintiff further claims that Defendant sent a letter to Plaintiff's attorney's office acknowledging service of process. Defendant denies that he sent any such letter.

Motion to Dismiss Pursuant to Rule 12(b)(5)—Insufficiency of Service

Rule 4(d)(1) states: "Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process."

Plaintiff has filed an affidavit that states that the Summons and Complaint in this case was personally delivered to Defendant in compliance with Rule 4(d)(1). Defendant claims he was never served and has filed affidavits in support of his position.

Upon establishing that he was never served with the Summons and Complaint in this case, Defendant moves for an Order dismissing this case or for such other relief that the Court may deem appropriate.

Motion to Dismiss Pursuant to Rule 12(b)(2)—Lack of Personal Jurisdiction

“Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.” *BB&T v. Taylor*, 369 S.C. 548, 552 (2006). As previously stated, Defendant claims that he was never served in this action. Without service, this Court has not yet established personal jurisdiction; therefore, Defendant moves for an Order dismissing this case or for such other relief that the Court may deem appropriate for lack of personal jurisdiction.

Request for Evidentiary Hearing Pursuant to Rule 43(e)

Both Defendant’s Rule 12(b)(5) and Rule 12(b)(2) motions are based upon Defendant’s assertion that he was never served. A “return of process establishes the legal presumption of service, and such presumption cannot be impeached by the mere denial of service by the defendant,” *Richardson Const. Co., Inc. v. Meek Engineering and Const., Inc.*, 274 S.C. 304, 311 (1980). “Affidavit of Service is only prima facie evidence of the facts stated therein and, where directly attacked, may be impeached by extrinsic evidence.” *MCC Financial Services, Inc. v. Mildred Duffel*, 265 S.C. 519, 523 (1975).

In the present case, Defendant has provided more than a mere denial of service. Defendant’s denial is corroborated by multiple people, and Defendant has pointed out patently false portions of the Affidavit of Service. There is clearly a dispute about the fact of service of process that rises above a mere denial of the Defendant. “Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses.” *Graham Law Firm, PA v. Makawi*, 396 S.C. 290, 299 (2012).

Rule 43(e) states: “When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but may direct that the matter be heard wholly or partly on oral testimony or depositions.” Defendant requests that this Court hold an evidentiary hearing requiring that Plaintiff present the private process server who signed the Affidavit of Service in this case, Kenn Doster, for his testimony and cross-examination, and to allow Defendant to call witnesses and present evidence (in accordance with the rules of evidence) in support of his position.

Respectfully submitted,

s/ Kenneth G. Southerlin, Jr.
Kenneth G. Southerlin, Jr.
Upstate Legal Solutions, LLC
SC Bar No. 71891
PO Box 765
Travelers Rest, SC 29690
(864) 354-6689

Dated: October 31, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	Case No: 2022-CP-23-01702
James Loper and Lauren Loper,)	
)	
Plaintiff,)	
)	
vs.)	
)	
John Dolan,	)	Related Case Number: 2024-CP-23-01046
)	
Defendant.)	
_____)	

MOTION TO RECONSIDER COURT’S ORDER DENYING DEFENDANT’S MOTION TO DISMISS PURSUANT TO: RULE 12(B)(5) INSUFFICIENCY OF SERVICE OF PROCESS RULE 12(B)(2)—LACK OF PERSONAL JURISDICITON AND REQUEST FOR AN EVIDENTIARY HEARING PURSUANT TO RULE 43(E)

This Motion is brought pursuant to Rule 59(b) of the South Carolina Rules of Civil Procedure. Defendant hereby moves this Honorable Court to reconsider its Order issued on February 14, 2025 denying Defendant’s Motion To Dismiss Pursuant To: Rule 12(B)(5) Insufficiency Of Service of Process, Rule 12(B)(2)—Lack Of Personal Jurisdiction, And Request For An Evidentiary Hearing Pursuant To Rule 43(E) on the grounds that the substantive issue of said motions had already been heard and hearing said motions because, as the Form 4 Order denying the Motions states:, “the Court has previously addressed the specific issues raised in this Defendant’s current Motions and finds that he is not entitled to another ‘bite at the apple’ by way of another hearing.”

In support of Defendant Dolan’s Motion to Reconsider, Defendant argues that Defendant’s Motions do not constitute an impermissible additional “bite at the apple” because of the unique nature of the issue of Service of Process and the ramifications that follow from that issue. Service of Process grants the Court personal jurisdiction over the Defendant. *Roche v.*

Young Bros., Inc. of Florence, 318 S.C. 207 (1995). Without Service of Process the Court has no personal jurisdiction over the Defendant.

An Order issued when a party has not been served is void for lack of personal jurisdiction. “The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *Universal Benefits, Inc. v. McKinney*, S.C. 179, 183 (Ct. App. 2002)(quoting *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct.App.1996)).

A void Order is one that has no effect at all as if it never existed. “A void judgment is one that, from its inception, is a complete nullity and is without legal effect...” *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291 (1995). Even an Order with a finding that service of process was proper is void if in-fact service of process never occurred. Such an Order would be void because that the Court never had personal jurisdiction over the defendant to issue such an order in the first place.

Also in furtherance of its position that Defendant’s Motions do not constitute an impermissible additional “bite at the apple,” in making its analysis, Defendant argues that the Court should apply the same standard to such situations as it applies to collateral attacks. In reference to collateral attacks, the South Carolina Supreme Court has stated “a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” *Chewing v. Ford Motor Co.*, 354 S.C. 72, 79-80 (2003). “On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... (4) the judgment is void...” *Id.* At 80.

The issue of service of process affects not only the outcome of the present case, but Defendant’s fundamental right to be able to present a case at all. Under the circumstances in the present case, Defendant argues that “the need to provide a fair and just resolution of the dispute” should outweigh the finality of a prior order addressing the issue of service of process, particularly if the possibility exists that said prior order may be void.

WHEREFORE, Defendant prays that his motion be granted, the Court’s Form 4 Order dated February 14, 2015 be vacated, and Defendant be allowed to argue his Motion To Dismiss Pursuant To: Rule 12(B)(5) Insufficiency Of Service of Process, Rule 12(B)(2)—Lack Of Personal Jurisdiction, And Request For An Evidentiary Hearing Pursuant To Rule 43(E).

Respectfully submitted,

s/ *Kenneth G. Southerlin, Jr.*

Kenneth G. Southerlin, Jr.
Upstate Legal Solutions, LLC
SC Bar No. 71891
PO Box 765
Travelers Rest, SC 29690
(864) 354-6689

Dated: February 20, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)	
	)	Case No: 2022-CP-23-01702
James Loper and Lauren Loper,)	
)	
Plaintiff,)	
)	
vs.)	
)	
John Dolan,	)	Related Case Number: 2024-CP-23-01046
)	
Defendant.)	
_____)	

MOTION TO RECONSIDER COURT’S ORDER AWARDING DAMAGES

This Motion is brought pursuant to Rule 59(b) of the South Carolina Rules of Civil Procedure. Defendant hereby moves this Honorable Court to reconsider its Order Awarding Damages issued on March 5, 2025.

Defendant Dolan reasserts his argument that he was never served in this action; therefore this Court does not have personal jurisdiction over him in this case thereby making all orders in this case void. (Service of Process grants the Court personal jurisdiction over the Defendant. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207 (1995). Without Service of Process the Court has no personal jurisdiction over the Defendant; therefore, the Order Awarding Damages would be void for lack of personal jurisdiction. “The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *Universal Benefits, Inc. v. McKinney*, S.C. 179, 183 (Ct, App. 2002)(quoting *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct.App.1996). “A void judgment is one

that, from its inception, is a complete nullity and is without legal effect...” *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291 (1995)).

Defendant Dolan further asserts that if, however, said orders, including the Order Awarding Damages, were not void, the Order Awarding Damages produces a harsh result. “It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits.” *Lewis v. Congress of Racial Equality and/or C. O. R. E., Inc.*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981). The harsh result and the procedural history leading to such a result is further described as follows:

A damages hearing was held on August 2, 2023. An Order were thereafter issued on August 15, 2023 granting Plaintiffs a default judgment and awarding damages of Thirty Nine Thousand, Seventy Nine and 00/100 Dollars (\$39,079.00).

“Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). Defendant Dolan filed a Motion and Notice to Vacate Default Judgment on April 19, 2024 under Rule 60(b)(4), SCRCP. Said motion was thereafter heard by the Court on July 17, 2024. Defendant’s Motion to Vacate was partially granted by the Court’s Form 4 Order filed July 22, 2024. The Form 4 Order states: “[T]he Court, already confirming the Default, sets aside the Default Judgment and orders that a hearing be scheduled with proper notice to Defendant’s attorney. This hearing will only be for the purpose of establishing damages as provide by Rule 55(b)(2).”

Defendant Dolan’s Motion and Notice of Motion To Vacate Default Judgement did not request that a second damages hearing be held. Defendant Dolan’s request for relief was:

“Defendant prays that his motion be granted, the Default judgment be vacated, and he be allowed to file an Answer in this case.” The portion of said requested relief asking that the Default judgment be vacated was granted; however the portion asking that “he be allowed to file an Answer” was denied.

“The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the ‘good cause’ standard established in Rule 55(c).” *Ex parte Trustgard Insurance Company*, 442 S.C. 485, 510, 900 S.E.2d 448, 461 (Ct. App. 2023)(quoting *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009)). “[R]elief from default judgment under Rule 60(b), SCRCP, ‘requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or ‘other misconduct of an adverse party.’” *Id.* (quoting *ITC Com. Funding, LLC v. Crerar*, 393 S.C. 487, 494, 713 S.E.2d 335, 339 (Ct. App. 2011) (quoting *Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888)). “The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk’s entry of default.” *Id.* (quoting *Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888-89).

The Court granted the portion of Defendant Dolan’s Motion to Vacate the Judgment where the Court vacated the default judgment, which the Court of Appeals stated had the higher standard. The Court denied Defendant Dolan relief from the default itself, which the Court of Appeals stated had a lower standard. By vacating the judgment, but not the default, and ordering that a damages hearing be held, the Court effectively gave Plaintiffs “another bite at the apple” while preventing Defendant Dolan the opportunity to provide a defense.

Defendant Dolan thereafter filed a Motion To Dismiss Pursuant To: Rule 12(B)(5) Insufficiency of Service of Process, Rule 12(B)(2) Lack of Personal Jurisdiction, and Request For an Evidentiary Hearing Pursuant to Rule 43(E). Said motions were denied a hearing on the basis that a hearing on those motions would give Defendant Dolan “another bite at the apple.” Thereafter, the Court proceeded to hold a second damages hearing, on February 14, 2025, thereby giving Plaintiffs “another bite at the apple.”

Plaintiffs took advantage of their second “bite at the apple” and presented new evidence that was obtained after Plaintiffs’ first damages hearing. The amounts presented by Plaintiffs through the use of new evidence at the February 14, 2025 hearing must have reflected a damage amount that greatly exceeded the evidence presented at Plaintiffs’ first damages hearing. As a result of Plaintiffs’ second “bite at the apple” the Court issued the Order Awarding Damages in the amount of Eighty Four Thousand, One Hundred Forty-Four and 97/100 Dollars (\$84,144.97).

This damages amount exceeds Plaintiffs’ original damages award of Thirty Nine Thousand, Seventy Nine and 00/100 Dollars (\$39,079.00) by Forty Five Thousand, Sixty Five and 97/100s Dollars (\$45,065.97). Plaintiffs’ new default judgment amount is more than double the amount of Plaintiffs’ original default judgment. The new default judgment amount is a harsh result that, as the South Carolina Supreme Court has indicated, should be scrutinized, and it is a result that would be avoided by a trial on the merits.

Therefore, Defendant Dolan has been penalized the sum of Forty Five Thousand, Sixty Five and 97/100s Dollars (\$45,065.97) for moving to vacate a final judgment, on which his argument was successful. Granting Defendant Dolan relief from a judgment without granting relief from a default only served to allow Plaintiffs a “second bite at the apple” while preventing Defendant Dolan from presenting his defense and allowing the case to be tried on the merits.

WHEREFORE, Defendant prays that his motion be granted, the Court's Order Awarding Damages be vacated, the Court instruct the Clerk of Court to not enter judgment for Plaintiffs, and Defendant Dolan be allowed to file his Answer and proceed with a trial on the merits.

Respectfully submitted,

s/ Kenneth G. Southerlin, Jr.

Kenneth G. Southerlin, Jr.
Upstate Legal Solutions, LLC
SC Bar No. 71891
PO Box 765
Travelers Rest, SC 29690
(864) 354-6689

Dated: March 6, 2025

AFFIDAVIT OF SERVICE

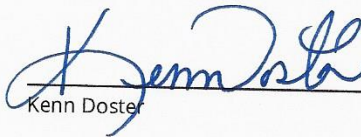
Case: 2022-CP-2301702	Court: Greenville County Court of Common Pleas	County:	Job: 6996311
Plaintiff / Petitioner: James Loper and Lauren Loper		Defendant / Respondent: Joshua S. Fernandez, Kelly C. Fernandez, John Dolan, Chris Loper, Lynda Sams, and Keller Williams Greenville Upstate	
Received by: Whitesell Process Service of Greenville SC		For: Holder Padgett Littlejohn & Prickett	
To be served upon: John Dolan			

I, Kenn Doster, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: John Dolan, Home: 104 Fawn Ridge Way, Mauldin, SC 29662
Manner of Service: Personal/Individual, May 7, 2022, 10:37 am EDT
Documents: Summons (Jury Trial Demanded) and Complaint (Jury Trial Demanded) (Received May 5, 2022 at 2:58pm EDT)

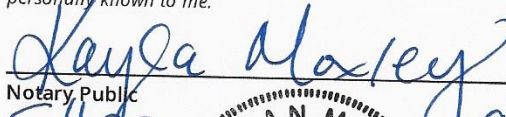
Additional Comments:

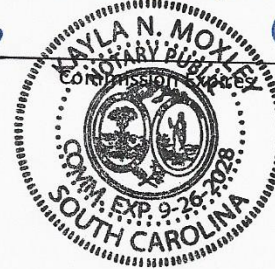
- 1) Unsuccessful Attempt: Apr 27, 2022, 4:50 pm EDT at 240 Old River Road, Pelzer, SC 29669
Vacant lot, no homes between 260-243.
- 2) Unsuccessful Attempt: May 3, 2022, 8:47 am EDT at Home: 104 Fawn Ridge Way, Mauldin, SC 29662
No answer to repeated knocking. No lights were on inside the residence. I observed no sounds from within the residence. No vehicles present.
- 3) Successful Attempt: May 7, 2022, 10:37 am EDT at Home: 104 Fawn Ridge Way, Mauldin, SC 29662 received by John Dolan. Age: 60-65; Ethnicity: Caucasian; Gender: Male; Weight: 185; Height: 5'9"; Hair: Gray; Eyes: Blue; Attempted service at the address provided. I made contact with John Dolan who confirmed his identity and accepted service without incident.
No glasses; Married; No military.


 Kenn Doster _____ Date 5-11-22

Whitesell Process Service of Greenville SC
 2435 E North St Suite 1108-323
 Greenville, SC 29615
 864-402-6009

Subscribed and sworn to before me by the affiant who is personally known to me.


 Notary Public _____ Date 5-11-22



ELECTRONICALLY FILED - 2022 May 11 3:00 PM - GREENVILLE - COMMON PLEAS - CASE#2022CP2301702

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

James Loper and Lauren Loper,)
)
Plaintiff,)
)
vs.)
)
Joshua S. Fernandez, Kelly C.)
Fernandez, John Dolan, Chris)
Loper, Lynda Sams, and Keller)
Williams Greenville Upstate)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No: 2022-CP-23-01702

AFFIDAVIT OF JOHN DOLAN

Related Case Number: 2024-CP-23-01046

PERSONALLY appeared before me, John Dolan, who after being duly sworn, deposes and states as follows:

1. I was served with a Summons and Complaint in case number 2024-CP-23-01046 on March 23, 2024.
2. Upon examining the Summons and Complaint in case number 2024-CP-23-01046 I learned of this case, case number 2022-CP-23-01702, and a default judgment that had been entered against me.
3. I was never served with any documents in case number 2022-CP-23-01702 nor did I receive any notice of any court proceeding.
4. I examined the Court records concerning this case and found an Affidavit of Service stating that I was served with a Summons and Complaint on May 7, 2022 at the address of 104 Fawn Ridge Way, Mauldin, SC 29662. A copy of said Affidavit of Service is attached as Exhibit "A".
5. The Affidavit of Service is not true.
6. I did not reside at 104 Fawn Ridge Way in Mauldin. My residence has been 13 3rd Street, Greenville, SC 29661 (Tax Map Number: 0122000501800) since I bought the property in April, 2018. A copy of my deed to 13 3rd Street is attached as Exhibit "B".

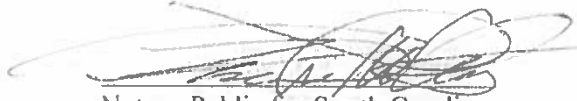
7. My sister, Mary Jane C. Parks, owned 104 Fawn Ridge Way in Mauldin on the date the incorrect Affidavit of Service states that I was served. My sister acquired title to that property in 2007 from the Estate of Harry Joseph Parks. A Deed of Distribution showing Mary Jane C. Parks as owner of 104 Fawn Ridge Way is attached as Exhibit "C".
8. When I bought my residence at 13 3rd Street I used my sister's address to receive my tax notice; however, by 2022 I had changed my address with the tax office to 13 3rd Street. A copy of the Real Property Details for Tax Map Number 0122000501800 for 2022 from the Greenville County Property Tax website is attached as Exhibit "D".
9. Said Real Property Details from 2022 also indicates that Tax Map Number 0122000501800 is my legal residence.
10. My South Carolina Driver's License, which was issued in 2020, shows my address as 13 3rd Street. A copy of my Driver's License is attached as Exhibit "E".
11. The incorrect Affidavit of Service does not show any attempt to serve me at my residence.
12. During the first two weeks of May, 2022 I was working on a job in northern Greenville County. I worked that job through the weekend. On Saturday May 7, 2022 at 10:30 a.m. I was working on that job. I know that because I specifically remember working on that Saturday. I was not visiting my sister at 10:30 a.m. that morning.
13. The incorrect Affidavit of Service states that the individual allegedly served had a height of 5'9" and had blue eyes. I am 5'6" and have brown eyes, both of which are indicated on my South Carolina Driver's License.
14. Furthermore, in examining the court records for this case, I found a document entitled Notice of Hearing. The Certificate of Service of the Notice of Hearing states that the Notice of Hearing was mailed to 104 Fawn Ridge Way on July 21, 2023. A copy of the Notice of Hearing and Certificate of Service are attached as Exhibit "F".
15. My sister sold 104 Fawn Ridge Way on June 13, 2022. A copy of the recorded deed showing that she sold the property is attached as Exhibit "G".
16. The Notice of Hearing was apparently mailed to my sister's former address over a year after she had sold the property. There is no way I could have received notice of that hearing.


17. I was not served with any documents in this case. I did not receive any documents related to this case in the mail. I was not aware of this case at all until I was served with a foreclosure attempting to foreclose on my personal residence.

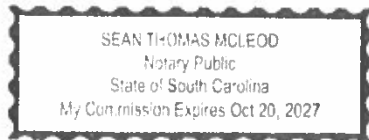
18. I have reviewed this Affidavit and received a copy.

SWORN to before me this

19th day of April, 2024


Notary Public for South Carolina
My Commission Expires: October 20th, 2027


John Dolan



IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

James Loper and Lauren Loper,)
)
Plaintiff,)
)
vs.)
)
Joshua S. Fernandez, Kelly C.)
Fernandez, John Dolan, Chris)
Loper, Lynda Sams, and Keller)
Williams Greenville Upstate)
)
Defendants.)

Case No: 2022-CP-23-01702

AFFIDAVIT OF SHARON CAULDER

Related Case Number: 2024-CP-23-01046

PERSONALLY appeared before me, Sharon Caulder, who after being duly sworn, deposes and states as follows:

1. I am John Dolan's fiancée.
2. On days that I am not working at my job I accompany John to his job sites and help with the work there.
3. On Saturday, May 7, 2022 I accompanied John to his work site.
4. John could not have been served with documents on May 7, 2022 at 10:37 a.m. because on that date and time he and I were both at John's worksite.
5. I have reviewed this Affidavit and received a copy.

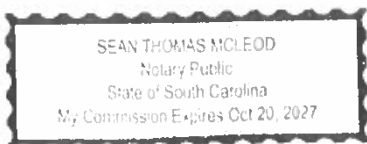
SWORN to before me this

15 th day of April, 2024

Notary Public for South Carolina

Sharon Caulder

My Commission Expires October 2nd 2027



STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Loper and Lauren Loper,)
)
)
Plaintiff,)
)
vs.)
)
Joshua S. Fernandez, Kelly C.)
Fernandez, John Dolan, Chris)
Loper, Lynda Sams, and Keller)
Williams Greenville Upstate)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No: 2022-CP-23-01702

AFFIDAVIT OF
MARY JANE C. PARKS


Related Case Number: 2024-CP-23-01046

PERSONALLY appeared before me, Mary Jane C. Parks, who after being duly sworn, deposes and states as follows:

1. My name is Mary Jane C. Parks.
2. I give this affidavit freely and voluntarily.
3. I was the owner of 104 Fawn Ridge Way, Mauldin, SC 29662 in May of 2022.
4. I owned 104 Fawn Ridge Way, Mauldin, SC 29662 from September 20, 2007 to June 13, 2022.
5. My brother is John Dolan, a Defendant in this case.
6. My brother was not residing at 104 Fawn Ridge Way, Mauldin, SC 29662 in May of 2022.
7. My brother was not present at 104 Fawn Ridge Way, Mauldin, SC 29662 on May 7, 2022.
8. I know that my brother was not present at 104 Fawn Ridge Way, Mauldin, SC 29662 on May 7, 2022 because during the month of May, 2022 I was packing and preparing to move. My brother was not there during this process.
9. I did not receive any mail addressed to John Dolan from Holder, Padgett, Littlejohn and Prickett, LLC.
10. I have reviewed this Affidavit and received a copy.

SWORN to before me this

19 th day of July, 2024


Notary Public for South Carolina
My Commission Expires: 3-29-28


Mary Jane C. Parks

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Loper and Lauren Loper,)
)
)
Plaintiff,)
)
)
vs.)
)
Joshua S. Fernandez, Kelly C.)
Fernandez, John Dolan, Chris)
Loper, Lynda Sams, and Keller)
Williams Greenville Upstate)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Case No: 2022-CP-23-01702

AFFIDAVIT OF
DR. JOHN WALTON

Related Case Number: 2024-CP-23-01046

PERSONALLY appeared before me, Dr. John E. Walton, who after being duly sworn, deposes and states as follows:

1. My name is John E. Walton, M.D.
2. I give this affidavit freely and voluntarily.
3. I am a urologist with Blue Ridge Urology located in Greenville County, South Carolina.
4. I was the owner of 4005 Blue Ridge Circle; Greer SC 29651 in May of 2022.
5. I hired John Dolan to do construction work on the house located at 4005 Blue Ridge Circle; Greer SC 29651 in May of 2022.
6. On the morning of May 7, 2022, John Dolan was working the house located at 4005 Blue Ridge Circle; Greer SC 29651.
7. I have reviewed this Affidavit and received a copy.

SWORN to before me this

24 th day of July, 2024

James B. Auman
Notary Public for South Carolina
My Commission Expires: 8-1-2028

John Walton
Dr. John Walton

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
James Loper and Lauren Loper,)
)
Plaintiffs,)
v.)
)
Joshua S. Fernandez, Kelly C. Fernandez,)
John Dolan, Chris Loper, Lynda Sams,)
and Keller Williams Greenville Upstate,)
)
Defendants.)
_____)

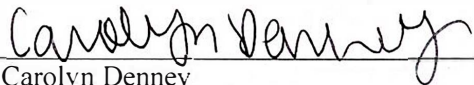
IN THE COURT OF COMMON PLEAS
C.A. NO.: 2022-CP-23-01702

AFFIDAVIT OF CAROLYN DENNEY

PERSONALLY APPEARED before me, Carolyn Denney, who being duly sworn, deposes and says as follows:

1. My name is Carolyn Denney, and I am competent in all respects to testify regarding the matters set forth herein.
2. I give this affidavit voluntarily.
3. I have been a paralegal at the law firm of Holder Padgett Littlejohn + Prickett, LLC since February 2022.
4. On May 9, 2022, I received an email from Whitesell Process Service of Greenville SC stating that Defendant John Dolan had been personally served with the Summons and Complaint in this matter by process server Kenn Doster (see **Exhibit A**).
5. On or about May 11, 2022, our office received a written note from John Dolan via US Mail stating that he received the complaint and was seeking legal counsel (see **Exhibit B**).

FURTHER AFFIANT SAYETH NAUGHT.



Carolyn Denney

Sworn to and subscribed before me this 12th day of July 2024


Notary Public, State of South Carolina
My Commission Expires: 8/15/2032



From: [Kay Moxley](#)
To: [Carolyn Denney](#)
Subject: [ServeManager] Job #6996311 Served
Date: Monday, May 9, 2022 10:55:00 AM

Served

Kay Moxley shared a service notification with you:

Details

Process Server: Kenn Doster

Date & Time: May 7, 2022, 10:37 am EDT

Service Type: Personal/Individual

Description of Service:

Attempted service at the address provided. I made contact with John Dolan who confirmed his identity and accepted service without incident.

Recipient

Recipient: John Dolan

Age: 60-65

Ethnicity: Caucasian

Gender: Male

Weight: 185

Height: 5'9"

Hair: Gray

Eyes: Blue

Description of Recipient: No glasses; Married; No military.

Service Address

104 Fawn Ridge Way, Mauldin, SC 29662, Greenville

GPS Data

Mobile Device: Safari version 15 on iOS (iPhone) 15.4.1

GPS Coordinates: [34.76171175, -82.31279484](#)

GPS Timestamp: 1651934262000

EXHIBIT A

ELECTRONICALLY FILED - 2024 Jul 15 7:57 AM - GREENVILLE - COMMON PLEAS - CASE#2022CP2301702

Job & Case

Job: 6996311

Recipient: John Dolan

Case: 2022-CP-2301702

Plaintiff: James Loper and Lauren Loper

Defendant: Joshua S. Fernandez, Kelly C. Fernandez, John Dolan, Chris Loper, Lynda Sams, and Keller Williams Greenville Upstate

Court: Greenville County Court of Common Pleas

County:

Documents: Summons (Jury Trial Demanded) and Complaint (Jury Trial Demanded)

Shared with you by:

Kay Moxley
Whitesell Process Service of Greenville SC
gvl.papers@whitesellpi.com
864-402-6009

TO: Holder, Padgett, Littlejohn & Prickett, LLC

I have received the complaint of #2Q22CP2301702 on 05/09/2022.

I am seeking legal council.

John Dolan