

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

John Doe 305, Julie McDonald, and
Richard McDonald,

Case No.: 2022-CP-10-04031

Plaintiffs,

v.

Lawrence E. Richter, Jr., David K. Haller,
Richter & Haller, LLC, The Bishop of
Charleston a corporation sole,

**ORDER GRANTING LAWYER
DEFENDANTS' MOTIONS TO DISMISS**

RECEIVED

Jan 27 2026

Defendants.

SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT for an in-person hearing at the Charleston County Courthouse on October 7, 2025, on motions of Defendants Lawrence E. Richter, Jr., David A. Haller and Richter and Haller, LLC (“the Lawyer Defendants”) to dismiss pursuant to Rule 12, SCRCP. At the hearing, Gregg E. Meyers, Esquire appeared on behalf of the Plaintiffs. Benjamin C. Bruner, Esquire appeared on behalf of Lawrence E. Richter and Richter & Haller, LLC. John E. Cuttino, Esquire appeared on behalf of David K. Haller. Carmelo Barone Sammataro appeared on behalf of The Bishop of Charleston a corporation sole. After careful consideration of the materials filed and the arguments of the parties, the Court finds the Lawyer Defendants’ Motions to Dismiss should be GRANTED.

FACTUAL & PROCEDURAL BACKGROUND

This action is the eleventh such one filed against the Lawyer Defendants arising out of a 2007 class action settlement in which the Lawyer Defendants served as class counsel for claims against the Bishop of Charleston, a Corporation Sole, and The Bishop of the Diocese of Charleston, in his official capacity (“the Diocese”) relating to alleged sexual abuse by priests of the Diocese.

In this case, the Plaintiffs do not allege any claims against the Diocese related to the sexual abuse they allege to have suffered. Instead, they allege a claim against the Lawyer Defendants for declaratory relief, professional negligence and breach of fiduciary duty, civil conspiracy, conversion, accounting, and disgorgement in connection with the class action cases. Against the Diocese, the Plaintiff alleges only aiding and abetting breach of fiduciary duty.

Plaintiffs filed this case on August 30, 2022.¹ Two days later, The Bishop of Charleston a corporation sole (“the Diocese”) removed the case to the United States District Court for the District of South Carolina (a “snap removal”). On September 16, 2022, the Lawyer Defendants filed a Motion to Remand.² Five days later, the Lawyer Defendants filed a motion requesting that the District Court stay “all deadlines, including responsive pleadings and discovery, until the Lawyer Defendants’ motion to remand this matter to state court is decided.”³ On October 7, 2022, the Lawyer Defendants filed a motion to dismiss “in an abundance of caution and subject to their Motion to Remand [Docket Entry No. 7] or the Motion to Stay All Deadlines [Docket Entry No. 8], which have not been decided.”⁴ On June 12, 2023, Judge Gergel granted the Motion to Remand.⁵ The following day, a certified copy of his Order was transmitted to and filed with this action.⁶

Plaintiffs never served the summons and complaint, either before the removal, during the removal, or after the remand.⁷ On September 1, 2023, Richter and Richter & Haller, LLC filed a

¹ Complaint, August 30, 2022.

² Joint Motion to Remand of Lawyer Defs., September 16, 2022.

³ Joint Motion of Lawyer Defs. To Stay All Deadlines, September 21, 2022.

⁴ Motion to Dismiss on Behalf of Lawyer Defendants, October 7, 2022, at 1.

⁵ Order and Opinion, C/A No. 2:22-cv-02940-RMG (June 12, 2023).

⁶ Certified Order and Opinion, C/A No. 2022-CP-10-4031 (June 13, 2023).

⁷ Pls.’ Memo Opp. Mot. to Dismiss, October 2, 2025, at 5 (“We agree the summons and complaint were never served on class counsel.”)

motion to dismiss based upon the Plaintiffs' failure to serve the summons and complaint, among other grounds. On September 5, 2023, Haller filed a similar motion.

On September 10, 2025, the Supreme Court assigned this case to the undersigned.⁸ After being assigned to the case, the Court scheduled a hearing for October 7, 2025.

At the October 7th hearing, counsel for the parties appeared in person and argued the Lawyer Defendants' motions thoroughly. Following the hearing, the Court took the matter under advisement and requested additional briefing. On November 6, 2025, the Court entered a Form 4 Order granting the motions and directing, "Defense counsel is to prepare a formal Order within 10 days." The Court subsequently extended defense counsel's time to provide the proposed order to permit time for defense counsel to receive the transcript of the hearing.

Having carefully considered the motions, the supporting and opposing memoranda and additional materials submitted by the parties, the arguments of counsel, and applicable law, I find and conclude the Lawyer Defendants' motions should be granted.

STANDARD

Under Rule 3(a), SCRCF, "A civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 4(a), SCRCF, requires the plaintiff or plaintiff's counsel to issue the summons and to serve copies of the original "upon each defendant." "Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule." Rule 4(d), SCRCF.

⁸ Order entered September 10, 2025 in Appellate Case 2020-001415.

“The purpose of the summons is to acquire jurisdiction of the person of the defendant and to give him notice of the action and an opportunity to appear and defend.” *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 8–9, 753 S.E.2d 537, 541 (2014) (quoting *State v. Sanders*, 118 S.C. 498, 502–03, 110 S.E. 808, 810 (1920)).

“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party.” Rule 5(d), SCRPC. *See also* Rule 12(b)(2), SCRPC (providing for dismissal for lack of jurisdiction over the person), *and* Rule 12(b)(5), SCRPC (providing for dismissal for insufficiency of service).

ANALYSIS

I. Failure to Serve Summons and Complaint

Plaintiffs concede they never served the summons and complaint. Therefore, disposition of the Lawyer Defendants’ motions turn on whether the Lawyer Defendants voluntarily appeared in this action. Plaintiffs argue the Lawyer Defendants voluntarily appeared through the motion to dismiss filed in the District Court before the case was remanded back to state court. They also argue the Lawyer Defendants voluntarily appeared by filing the motions to dismiss at bar. The Court is not persuaded by those arguments and finds the motions to dismiss should be granted.

As noted above, the law requires service to establish personal jurisdiction. *White Oak Manor, supra*. “[P]arties are generally permitted to agree to particular methods of service or waiving service altogether.” *Id.* (citing *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 565, 683 S.E.2d 486, 491 (2009) (“[W]here service is accomplished in a manner consented to by the defendant, service of process is valid and a court has jurisdiction over the defendant for purposes of entering judgment.”); *Myrtle Beach Lumber Co. v. Globe Int'l Corp.*, 281 S.C. 290, 292, 315 S.E.2d 142, 143 (Ct.App.1984) (“[A] defendant may waive personal service by consent or by designating an agent to receive service of process.”)).

Under Rule 4(d), SCRCP, “Voluntary appearance by defendant is equivalent to personal service[.]” When determining whether a party has waived service of process, “courts decide on a case by case basis whether a defendant's act demonstrates an *intent to submit to the court's jurisdiction.*” *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 338, 644 S.E.2d 793, 796 (2007) (emphasis added). A defendant demonstrating his intent to submit to the state court’s jurisdiction amounts to waiver of the right challenge personal jurisdiction, which requires some evidence the defendant voluntarily and intentionally abandoned that defense. *Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 507, 900 S.E.2d 448, 459 (Ct. App. 2023) (“Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised...A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Waiver requires a party to have known of a right and known that right was being abandoned.”) (internal quotations and citations omitted). While the Lawyer Defendants did file a motion to dismiss in the District Court and filed motions to dismiss following remand to this Court, none of those actions evidenced their intent to submit to this Court’s jurisdiction notwithstanding the Plaintiffs’ failure to serve the summons and complaint.

With regard to the motion filed in federal court, I am not persuaded by the Plaintiffs’ argument. First, at the time of that filing, this Court was divested of jurisdiction entirely. *Limehouse v. Hulsey*, 404 S.C. 93, 105, 744 S.E.2d 566, 573 (2013) (“Removal proceedings impact the jurisdiction of the state court in that removal of a state case to federal court ‘divests’ the state court of jurisdiction.”) (internal quotation omitted). *See also* 28 U.S.C.A. § 1446 (LexisNexis, Lexis Advance through Public Law 119-36, approved September 5, 2025) (providing that upon removal “the State court shall proceed no further unless and until the case is remanded.”); *and Roman Catholic Archdiocese v. Acevedo-Feliciano*, 589, U.S. 57, 64, 140 S.Ct. 696, 700 (2020).

The Plaintiffs cite no authority for their theory that a filing in a federal court also serves as an appearance in a state court.

Second, the Plaintiffs point to no specific statement in the Lawyer Defendants' motion evidencing any intent to submit to the jurisdiction of the state court (which had no jurisdiction at the time). Instead, Plaintiffs rely on the mere fact the motion was filed. In response, the Lawyer Defendants argue the motion was made with specific reservations because their motion to remand was pending and, in addition, the filings in the District Court are immaterial in this action because upon remand, this Court was bound under *Limehouse* to proceed as though the removal had never been attempted.

Having considered the parties' submissions and arguments, submitted both before, during, and after the October 7th hearing, the Court finds the Lawyer Defendants did not demonstrate any intent to submit to the jurisdiction of the state court and therefore did not voluntarily appear in this action by filing the motion to dismiss in the District Court. *See Limehouse*, 404 S.C. at 112, 744 S.E.2d at 577 ("When the state court resumed jurisdiction, it had a duty "to proceed as though no removal had been attempted.") (quoting *State v. Columbia Ry., Gas & Elec. Co.*, 112 S.C. 528, 537, 100 S.E. 355, 357 (1919)) (emphasis added). *See also* Wagstaffe, *Prac Guide: Fed Civil Proc Before Trial* § 8-XII ("State law—both court made and statutory—will largely determine what effect actions taken in federal court—including appearances and filings—while the matter was still pending will have in state court.") (citing *Ayres v. Wiswall*, 112 U.S. 187, 190–191 (1884) ("It will be for the state court, when the case gets back there, to determine what shall be done with pleadings filed and testimony taken during the pendency of the suit in the other jurisdiction"); *Pellebon v. State ex rel. Bd. of Regents of Univ. of Oklahoma*, 358 P.3d 288, 292 (Okla. App. 2015) (noting after remand, "the issue of the viability and effect to be given to pleadings filed in federal court is left to the state courts"); and *Laguna Vill., Inc. v. Laborers'*

Internat. Union of N. Am., 35 Cal.3d 174, 180 (1983) (collecting state court cases giving effect to federal pleadings filed before remand)).

The Court further finds the Lawyer Defendants did not voluntarily appear by moving for dismissal following remand. Their motion asserted the lack of service and lack of personal jurisdiction among the grounds for dismissal. South Carolina courts have long permitted a defendant to move for dismissal on those grounds without deeming the defendant to have waived the defenses merely by filing the motion. *See, e.g., Christian v. Healy*, 435 S.C. 507, 510-11, 868 S.E.2d 403, 405 (Ct. App. 2021) (“Upon failure to serve the summons and complaint, the action may be dismissed by the court on the court's own initiative or upon application of any party...A party may assert a defense of insufficiency of service of process before filing a responsive pleading.”) (internal citations omitted). *See also* Rule 12(b), SCRCP (“No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.”); Rule 12(g), SCRCP (“A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him.”); Rule 12(h)(1), SCRCP (“A defense of lack of jurisdiction over the person...insufficiency of process, insufficiency of service of process...is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.”). Further support for this conclusion is drawn from correspondence between counsel submitted with the supplemental briefing following the hearing. On September 1, 2023, defense counsel pointed out that the summons and complaint were never served and requested that Plaintiffs’ counsel provide the date the time to answer began to run if he contended the Lawyer Defendants were in default. Despite the additional time the Court has afforded the parties before rendering its decision, the record contains no evidence that Plaintiff’s counsel ever responded to that request.

The Court therefore finds the Lawyer Defendants never voluntarily appeared in this action. Based upon that finding and the Plaintiffs' admission that they never served the summons and complaint—even after the Lawyer Defendants filed their motions over two years ago—the Court is bound to grant the motions and dismiss this action because the Plaintiffs failed to obtain service, or its equivalent, within the time prescribed in Rule 3. Consequently, the action has not been commenced pursuant to the Rule. *See* Rule 3(a), SCRPC. Even after tolling the time allowed for service while the Circuit Court's jurisdiction was suspended during removal, the Plaintiffs' time to serve the summons and complaint expired long ago. *See Limehouse, supra.*

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Lawyer Defendants motions to dismiss shall be and hereby are GRANTED and all claims and causes of action against the Lawyer Defendants are DISMISSED.

IT IS SO ORDERED.

[Judge's Signature on Following Page]



Charleston Common Pleas

Case Caption: John Doe 305 , plaintiff, et al VS Lawrence E Richter Jr , defendant, et al
Case Number: 2022CP1004031
Type: Order/Dismissal

So Ordered

William C. McMaster, III