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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2026-000507
Trial Court Case No. 2025-CP-10-03402

Laura Schaible and Russell Schaible, Respondents,
v.
Ilonka Sonja Taylor and David Abdo, Appellants.

MOTION FOR LEAVE TO FILE 60(b)(4) MOTION WITH LOWER COURT

Pursuant to Rule 240 of the South Carolina Appellate Court Rules and Rule 60 of the South Carolina Rules of Civil Procedure, Appellants Ilonka Sonja Taylor and David Abdo hereby move this Court for leave to file a motion under Rule 60(b)(4), SCRPC in the Charleston County Court of Common Pleas for the purpose of seeking relief from the orders entered by the Master in Equity in this action based on such orders being void due to the Master in Equity lacking subject matter jurisdiction.

Appellants further request that this Court stay all deadlines for briefing, designating the matter to be included in the record on appeal, and serving and filing the record on appeal, while the proposed Rule 60(b)(4) motion is pending in the lower court.

Appellants' requests in this motion are not for purposes of delay but instead are in the interest of judicial economy.

BACKGROUND

Respondents commenced civil action 2018CP1000440 in Charleston County against Appellants on January 30, 2018 seeking declaratory and injunctive relief regarding the existence, character and scope of an express easement described in a recorded instrument. Appellants answered and asserted a counterclaim for declaratory relief.

On February 12, 2021, an order of reference was issued by circuit court Judge Deidre Jefferson pursuant to Rule 53, SCRCF based on consent of the parties (the “Order of Reference”)(Exhibit A). The Order of Reference referred all causes of action to the Master in Equity and authorized the Master in Equity to enter final judgment with appeals to be taken in accordance with the South Carolina Appellate Court Rules.

A date-certain trial was scheduled to be held in front of the Master in Equity on June 24, 2021. (Exhibit B). The parties did not try the case to verdict that day, but instead respective counsel for the parties read the terms of a settlement among the parties into the record in open court (the “Settlement”). The court reporter’s transcript (the “Settlement Transcript”)(Exhibit C) notes the general terms of the Settlement and the subsequent steps the parties would take to finalize the Settlement, and also that after such subsequent steps were completed the parties would submit a proposed order to the Master in Equity for him to sign approving the Settlement and dismissing the action with prejudice.

On December 7, 2023, the Master in Equity issued an order striking the action pursuant to Rule 40(j), SCRCF (the “Dismissal Order”)(Exhibit D), which was entered in civil action 2018CP1000440.

On December 2, 2024, Plaintiffs filed a motion in civil action 2018CP1000440 to restore the case pursuant to Rule 40(j), SCRCF (the “Motion to Restore”)(Exhibit E).

No order of reference was issued in civil action 2018CP1000440 at any point in time after the Motion to Restore was filed.

On May 20, 2025, circuit court Judge Jennifer McCoy issued a consent order for substitution of counsel for the Defendants (the “Order Substituting Defense Counsel”)(Exhibit F).

On June 12, 2025, the Master in Equity issued a consent order restoring the case pursuant to Rule 40(j), SCRCF, which was entered in the dismissed civil action, 2018CP1000440, and also in a new civil action, 2025CP1003402 (the “Order to Restore”)(Exhibit G).

No order of reference was issued in the new civil action 2025CP1003402. The Order to Restore references the prior Order of Reference that had been entered on February 12, 2021 in the dismissed civil action, 2018CP1000440.

The Order to Restore stated that it amended and restated a previous order to restore issued on February 18, 2025 and ordered the case to be restored to the Master in Equity’s docket. The Charleston County Clerk of Court’s file book for civil action 2018CP1000440 does not show the entry of an order to restore on February 18, 2025, but instead shows the submission by Plaintiffs’ counsel of a proposed order to restore. (Exhibit H). The Charleston County Clerk of Court’s file book for civil action 2025CP1003402 does not show any entries prior to June 12, 2025. (Exhibit I).

The Master in Equity held a trial on October 22, 2025 and entered a judgment in favor of Plaintiffs on January 13, 2026 in civil action 2025CP1003402 (the “Trial Order”)(Exhibit J).

Not long after the entry of the Trial Order, Appellants engaged new counsel and timely moved for reconsideration of the Trial Order under Rules 52 and 59(e), SCRCF. The Master in Equity entered an order denying Appellants’ motion for reconsideration on February 5, 2026 (the “Motion to Reconsider Order”)(Exhibit K). Appellants then commenced the instant appeal.

Appellants now seek leave from this Court to make a motion under Rule 60(b)(4), SCRCPP to seek relief from the Order to Restore, the Trial Order and the Motion to Reconsider Order on the basis that such orders are void because the Master in Equity lacked subject matter jurisdiction and requests that this Court partially remand this matter to the circuit court for that limited purpose.

Appellants' proposed 60(b)(4) motion is properly heard by a presiding circuit court judge, rather than the Master in Equity, therefore Appellants also request that the limited remand directs the lower court to place the 60(b)(4) motion on the circuit court's nonjury docket to be heard by a presiding circuit court judge.

A copy of Appellants' proposed Rule 60(b)(4) motion is attached to this motion as Exhibit L and a copy of Appellants' proposed memorandum in support of the proposed Rule 60(b)(4) motion is attached to this motion as Exhibit M. Leave is requested to file the proposed Rule 60(b)(4) motion simultaneously in civil action 2025CP1003402 as to the Order to Restore, the Trial Order and the Motion to Reconsider Order and in civil action 2018CP1000440 as to the Order to Restore, since the Order to Restore has been entered in both actions.

GROUND FOR MOTION

I. Granting leave to file motion with lower court is in the interest of judicial economy.

Rule 60(b)(4), SCRCPP permits the lower court to relieve a party from judgments, orders and proceedings that are void. *Sanders v. Smith*, 431 S.C. 605, 616, 848 S.E.2d 604, 609 (Ct. App. 2020). Rule 60(b)(4) motions may to be made to the lower court during the pendency of an appeal, but only with leave of the appellate court. *See* Rule 60(b)(4), SCRCPP ("During the pendency of an appeal, leave to make the motion must be obtained from the appellate court.")

Appellants commenced the instant appeal prior to a Rule 60(b)(4) motion being heard in order to preserve their rights to appeal the Trial Order and Motion to Reconsider Order issued by

the Master in Equity. However, allowing the lower court to hear and rule on the issue of the Master in Equity's subject matter jurisdiction prior to proceeding further with this appeal would promote judicial economy, because appellate review of the Master in Equity's orders would not be necessary if they are determined to be void. *See Hudson v. S.C. Dep't of Highways & Pub. Transp.*, 324 S.C. 245, 478 S.E.2d 839 (1996)("[a]n appellate court should not needlessly expend its limited time and resources processing and deciding an appeal from an order or judgment which has been set aside.")

Further, Appellants are not seeking leave to file the Rule 60(b)(4) motion to delay or attempt to raise an issue that was waived or not preserved for appeal. Lack of subject matter jurisdiction cannot be waived through consent or otherwise (*Chabek v. Nationwide Mut. Fire Ins. Co.*, 303 S.C. 26, 28, 397 S.E.2d 786, 787 (Ct. App. 1990)) and subject matter jurisdiction of a master in equity is an issue that can be raised at any time, even on appeal (*First Citizens Bank and Trust Company, Inc. v. Taylor*, 431 S.C. 149, 847 S.E.2d 249 (Ct. App. 2020)).

II. Rule 60(b)(4) motion would be timely.

"Motions under Rule 60(b)(1), (2), or (3) must be made within a reasonable time, but not later than one year of the order taken, and those under (4) and (5) are subject only to the reasonable time limitation." *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 340, 745 S.E.2d 90, 92 (2013). Reasonable time for purposes of a Rule 60(b)(4) motion is determined by the trial court in its sound discretion. *See McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996).

The proposed Rule 60(b)(4) motion would be timely, as it would be made less than three (3) months after entry of the Trial Order and less than (10) months after the Order to Restore.¹ Further, Appellants' request for leave to make the motion is being made near the beginning of

¹ The proposed Rule 60(b)(4) motion would be timely even under the stricter one (1) year standard for motions brought under Rule 60(b)(1)–(3).

these appeal proceedings, prior to the parties or this Court expending significant time or resources processing this appeal.

III. The Master in Equity lacked subject matter jurisdiction.

For purposes of Rule 60(b)(4), orders and judgments are “void” if they are issued from courts which failed to provide proper due process, or from courts which lacked subject matter jurisdiction or personal jurisdiction. *Belle Hall Plantation Homeowner’s Ass’n, Inc. v. Murray*, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (Ct. App. 2017). A master in equity’s power and authority to issue orders and judgments is a question of subject matter jurisdiction. *First Citizens Bank and Trust Company, Inc. v. Taylor*, 431 S.C. 149, 847 S.E.2d 249 (Ct. App. 2020).

Pursuant to Rule 53, SCRCP, a master has no power or authority except that which is given to him by the order of reference. *Bunkum v. Manor Props.*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996)). An order issued by a master in equity is void at inception if the master does not have jurisdiction over the case. *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 66, 906 S.E.2d 94, 104 (Ct. App. 2024). As detailed in the attached proposed memorandum in support of the proposed Rule 60(b)(4) motion, the Master in Equity lacked subject matter jurisdiction when he entered the Order to Restore, the Trial Order and the Motion to Reconsider Order.

The Master in Equity only had the power and authority given to him by the circuit court under the Order of Reference, and that power and authority ended on December 7, 2023 when the Master in Equity dismissed civil action 2018CP1000440 by entering the Dismissal Order. When the Master in Equity entered the Dismissal Order, power and authority returned to the circuit court. When Respondents filed their Motion to Restore almost a year later, subject matter jurisdiction was in the circuit court, not the Master in Equity.

No order of reference was issued at any point after the Motion to Restore was filed. Thus,

the circuit court did not return any power or authority to the Master in Equity in the dismissed civil action, 2018CP1000440, nor did the circuit court ever give any power or authority to the Master in Equity in the new civil action, 2025CP1003402. Since the Master in Equity lacked subject matter jurisdiction to issue the Order to Restore, the Trial Order and the Motion to Reconsider Order, those orders are void.

IV. The circuit court, not the Master in Equity, has jurisdiction to hear the Rule 60(b)(4) motion.

The proposed Rule 60(b)(4) motion should be heard by a presiding circuit court judge, not the Master in Equity. As discussed in detail in the attached proposed memorandum in support of the proposed Rule 60(b)(4) motion, the Master in Equity's subject matter jurisdiction in civil action 2018CP1000440 ended on December 7, 2023 when it was dismissed, and the Master in Equity never had subject matter jurisdiction in civil action 2025CP1003402. However, even assuming *arguendo* that the Master in Equity did have subject matter jurisdiction to issue any of the subject orders, the power and authority to hear this Rule 60(b)(4) motion would be in the circuit court because the Master in Equity's jurisdiction would have terminated when he concluded his duties under the Order of Reference by entering the Motion to Reconsider Order. *See Narruhn v. Alea London Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (2013); *see Wachovia Bank of South Carolina, N.A. v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000); *see Bunkum v. Manor Props.*, 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996).²

CONCLUSION

For the reasons herein, Appellants respectfully submit that leave should be granted for

² Since the Master in Equity would have no further duties to perform under the Order of Reference, and since the Rule 60(b)(4) motion challenging the Master in Equity's jurisdiction would not involve any determination of the issues ruled upon in the Order to Restore, the Trial Order or the Motion to Reconsider Order, a presiding circuit court judge hearing the Rule 60(b)(4) motion would not run afoul of the general rule prohibiting judges from the same court overruling each other. *Narruhn*, 404 S.C. at 340-341, 745 S.E.2d at 92.

Appellants to file the proposed Rule 60(b)(4) motion with the lower court, that this Court should partially remand this matter to the lower court for that limited purpose and direct the lower court to place the motion on the circuit court's nonjury docket to be heard by a presiding circuit court judge, and that this Court should stay all deadlines for briefing, designating the matter to be included in the record on appeal, and serving and filing the record on appeal while the motion is pending in the lower court.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: *s/ Shawn R. Willis*

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Attorneys for Appellants

Ilonka Sonja Taylor and David Abdo

Charleston, South Carolina
April 1, 2026

EXHIBIT A

Order of Reference

Laura Schaible et al
PLAINTIFF(S)

Ionka Sonja Taylor et al
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:

This matter was scheduled to come before the Court on February 15, 2021 for a non-jury trial. With the consent of the parties, this case is hereby referred to the Master-in-Equity for Charleston County, South Carolina.

"In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case." Rule 53(b), SCRPC. Here, with the consent of the parties, the case is hereby referred to the Master in Equity for Charleston County.

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 02/11/2021 .

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.

The Master-In-Equity shall enter final judgment with any appeals to be taken in accordance with the South Carolina Appellate Court Rules. See Rule 53(e), SCRCP. The reference fee shall be paid directly to the office of the Master in Equity; upon a failure to do so, the Master shall order the case to be dismissed without prejudice for failure to comply with the Court's order.



Charleston Common Pleas

Case Caption: Laura Schaible VS Ionka Sonja Taylor

Case Number: 2018CP1000440

Type: Order/Electronic Form 4

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

EXHIBIT B

Master in Equity's File Book Index

Civil Action 2018CP1000440



**Charleston County
Master in Equity Case Details
Public Index**

Charleston County Home Page Clerk of Court Home Page Magistrates Court SC Judicial Home Page Search Tips

Switch View

Laura Schaible , plaintiff, et al VS Ionka Sonja Taylor , defendant, et al

Case Number:	2018CP1000440	Court Agency:	Master In Equity	Filed Date:	02/12/2021
Case Type:	Common Pleas	Case Sub Type:	Permanent Injunc 830	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Scarborough, Mikell R.		
Disposition:	Ended by Non Jury	Disposition Date:	02/05/2026	Disposition Judge:	Scarborough, Mikell R.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Schaible, Laura	Masters Note -	Action		10/22/2025-09:59	02/05/2026-09:59	
Gowder, W. Andrew Jr.	10/22/2025_MIECON_Roster/Notice of Motions Roster Publicatio	Action		09/26/2025-15:39	02/05/2026-15:39	
Moore, Patrick Hollingsworth	10/22/2025_MIECON_Roster/Notice of Motions Roster Publicatio	Action		09/26/2025-15:39	02/05/2026-15:39	
Williams, Jennifer	10/22/2025_MIECON_Roster/Notice of Motions Roster Publicatio	Action		09/26/2025-15:39	02/05/2026-15:39	
Schaible, Laura	Master/TRIAL DATE CERTAIN-Oct. 22 at 9:30	Action		09/18/2025-16:13	11/05/2025-16:13	
Schaible, Laura	NEF(06-12-2025 12:10:11 PM) Order/Restore Case To Active...	Filing		06/12/2025-12:10	12/07/2023-12:10	
Schaible, Laura	Amended Consent Order Restoring Case to Docket Pursuant Rule	Order		06/12/2025-12:10	12/07/2023-12:10	
Schaible, Laura	NEF(06-11-2025 11:27:18 AM) Proposed Order/Restore Case ...	Filing		06/11/2025-11:48	12/07/2023-11:48	
Schaible, Laura	Order/Order to Restore Rule 40J Coversheet	Filing		06/11/2025-11:27	12/07/2023-11:27	
Schaible, Laura	Masters Note -	Action		06/09/2025-12:04	12/07/2023-12:04	
Taylor, Ionka Sonja	NEF(05-20-2025 09:55:14 AM) Order/Substitution Of Counse...	Filing		05/20/2025-09:55	12/07/2023-09:55	
Taylor, Ionka Sonja	Order/Substitution Of Counsel f/Defnts	Order		05/20/2025-09:55	12/07/2023-09:55	
Taylor, Ionka Sonja	NEF(05-15-2025 05:00:02 PM) Notice/Notice of Appearance	Filing		05/16/2025-12:09	12/07/2023-12:09	
Taylor, Ionka Sonja	Notice/Notice of Appearance	Filing		05/15/2025-17:00	12/07/2023-17:00	
Abdo, David	Order/Order Cover Sheet \$25.00	Filing		05/15/2025-17:00	12/07/2023-17:00	
Moore, Patrick Hollingsworth	6/9/2025_HEARING_Roster/Notice of Motions Roster Publication	Action		05/12/2025-11:52	12/07/2023-11:52	
Massalon, John A.	6/9/2025_HEARING_Roster/Notice of Motions Roster Publication	Action		05/12/2025-11:52	12/07/2023-11:52	
Lesemann, Ellis Reed-Hill	6/9/2025_HEARING_Roster/Notice of Motions Roster Publication	Action		05/12/2025-11:52	12/07/2023-11:52	
Gowder, W. Andrew Jr.	6/9/2025_HEARING_Roster/Notice of Motions Roster Publication	Action		05/12/2025-11:52	12/07/2023-11:52	
Schaible, Laura	Master/Status-June 9 at 12:00	Action		05/12/2025-11:48	12/07/2023-11:48	
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Schaible, Russell	NEF(12-02-2024 09:32:53 AM) Motion/Restore Case	Filing		12/02/2024-09:38	12/07/2023-09:38	
Schaible, Laura	Motion/Restore Case to Docket Pursuant to Rule 40(J)	Motion		12/02/2024-09:32	06/09/2025-09:32	
Schaible, Laura	NEF(09-23-2024 10:35:15 AM) Notice/Notice of Appearance	Filing		09/23/2024-10:35	12/07/2023-10:35	
Schaible, Laura	Notice/Notice of Appearance	Filing		09/23/2024-10:35	12/07/2023-10:35	
Schaible, Laura	NEF(12-07-2023 11:27:03 AM) Order/Electronic Form 4	Filing		12/07/2023-11:27	12/07/2023-11:27	
Schaible, Laura	Order: Action Stricken Rule 40j	Order		12/07/2023-11:27	12/07/2023-11:27	
Schaible, Laura	NEF(05-16-2023 10:42:26 AM) Notice/Notice of Appearance	Filing		05/16/2023-10:42	12/07/2023-10:42	
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Schaible, Laura	Masters Note -	Action		04/10/2023-15:09	12/07/2023-15:09	
Schaible, Laura	Masters Note -	Action		04/05/2023-11:21	12/07/2023-11:21	
Schaible, Laura	Master/Status Hearing-April 12 at 3:30	Action		03/27/2023-11:13	04/12/2023-11:13	
Taylor, Ionka Sonja	NEF(03-24-2023 04:53:54 PM) Notice/Notice of Appearance	Filing		03/24/2023-16:54	12/07/2023-16:54	
Taylor, Ionka Sonja	Notice/Notice of Appearance	Filing		03/24/2023-16:53	12/07/2023-16:53	
Lenhardt, Robert Cody Jr.	4/3/2023_HEARING_Roster/Notice of Motions Roster Publication	Action		03/09/2023-13:23	12/07/2023-13:23	

Massalon, John A.	4/3/2023_HEARING_Roster/Notice of Motions Roster Publication	Action		03/09/2023-13:23	12/07/2023-13:23
Schaible, Laura	Master/Status Hearing-April 3 at 11:00	Action		03/09/2023-12:14	03/27/2023-12:14
Schaible, Laura	Masters Note -	Action		11/30/2022-15:45	12/07/2023-15:45
Schaible, Laura	Masters Note -	Action		06/24/2021-09:36	12/07/2023-09:36
Massalon, John A.	6/24/2021_MIECON_Roster/Notice of Motions Roster Publication	Action		06/01/2021-12:42	12/07/2023-12:42
Lenhardt, Robert Cody Jr.	6/24/2021_MIECON_Roster/Notice of Motions Roster Publication	Action		06/01/2021-12:42	12/07/2023-12:42
Schaible, Laura	Master/In-Person-Trial Date Certain June 24, 2021	Action		06/01/2021-12:41	07/02/2021-12:41
Schaible, Laura	Masters Note -	Action		05/10/2021-10:03	12/07/2023-10:03
Lenhardt, Robert Cody Jr.	5/10/2021_HEARING_Roster/Notice of Motions Roster Publicatio	Action		05/03/2021-15:13	12/07/2023-15:13
Massalon, John A.	5/10/2021_HEARING_Roster/Notice of Motions Roster Publicatio	Action		05/03/2021-15:13	12/07/2023-15:13
Schaible, Laura	Master/WebEx-Status Hearing May 10 at 10:00	Action		05/03/2021-15:01	05/18/2021-15:01
Schaible, Laura	Master/Reference Fees Paid	Action		03/11/2021-15:01	12/07/2023-15:01
Schaible, Laura	Master/Miscellaneous Filing	Filing		03/11/2021-15:01	12/07/2023-15:01
Schaible, Laura	Order/Referred to Master (Reference Only, No Image)	Order		02/12/2021-15:05	12/07/2023-15:05
Schaible, Laura	NEF(02-12-2021 03:04:07 PM) Order/Electronic Form 4	Filing		02/12/2021-15:04	12/07/2023-15:04
Schaible, Laura	Order/Case Referred to Master	Order		02/12/2021-15:04	12/07/2023-15:04
Massalon, John A.	2/15/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/22/2021-08:52	12/07/2023-08:52
Lenhardt, Robert Cody Jr.	2/15/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/22/2021-08:52	12/07/2023-08:52
Lenhardt, Robert Cody Jr.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/11/2021-11:09	12/07/2023-11:09
Massalon, John A.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/11/2021-11:09	12/07/2023-11:09
Massalon, John A.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		12/16/2020-11:29	12/07/2023-11:29
Lenhardt, Robert Cody Jr.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		12/16/2020-11:29	12/07/2023-11:29
Lenhardt, Robert Cody Jr.	11/30/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		11/03/2020-09:33	12/07/2023-09:33
Massalon, John A.	11/30/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		11/03/2020-09:33	12/07/2023-09:33
Schaible, Laura	NEF(10-23-2020 10:50:04 AM) Answer/Answer To Amended Com...	Filing		10/23/2020-11:11	12/07/2023-11:11
Schaible, Laura	Plaintiffs Answer to CounterClaims	Filing		10/23/2020-10:50	12/07/2023-10:50
Taylor, Ionka Sonja	NEF(09-17-2020 12:39:43 PM) Answer/Amended Answer And Co...	Filing		09/17/2020-13:14	12/07/2023-13:14
Taylor, Ionka Sonja	Defendants Am/Answer & Counterclaim to Pltffs Complaint	Filing		09/17/2020-12:39	12/07/2023-12:39
Taylor, Ionka Sonja	NEF(09-10-2020 02:09:57 PM) Order/Electronic Form 4	Filing		09/10/2020-14:10	12/07/2023-14:10
Taylor, Ionka Sonja	Order/Defnts Motion/Amend & Supp Motion/Amend Granted	Order		09/10/2020-14:09	12/07/2023-14:09
Schaible, Laura	NEF(06-12-2020 05:03:09 PM) Memo/Memo in Opposition	Filing		06/15/2020-09:33	12/07/2023-09:33
Schaible, Laura	Memo/Opp to Mot/Amend Answer & Supplemental Mot/Amend Answer	Filing		06/12/2020-17:03	12/07/2023-17:03
Massalon, John A.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/27/2020-11:04	12/07/2023-11:04
Lenhardt, Robert Cody Jr.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/27/2020-11:04	12/07/2023-11:04
Lenhardt, Robert Cody Jr.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/27/2020-11:04	12/07/2023-11:04
Massalon, John A.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/27/2020-11:04	12/07/2023-11:04
Massalon, John A.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/26/2020-08:48	12/07/2023-08:48
Lenhardt, Robert Cody Jr.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/26/2020-08:48	12/07/2023-08:48
Lenhardt, Robert Cody Jr.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-14:15	12/07/2023-14:15
Massalon, John A.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-14:15	12/07/2023-14:15
Massalon, John A.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-14:15	12/07/2023-14:15
Lenhardt, Robert Cody Jr.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-14:15	12/07/2023-14:15
Lenhardt, Robert Cody Jr.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/09/2020-11:28	12/07/2023-11:28
Massalon, John A.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/09/2020-11:28	12/07/2023-11:28
Taylor, Ionka Sonja	NEF(02-25-2020 04:39:57 PM) Motion/Alter and/or Amend	Filing		02/26/2020-08:41	12/07/2023-08:41
Taylor, Ionka Sonja	Supplemental Motion/Amend Answer	Motion		02/25/2020-16:39	06/23/2020-16:39
Schaible, Laura	NEF(02-04-2020 11:07:36 AM) Order/Protection from Court ...	Filing		02/04/2020-11:07	12/07/2023-11:07
Schaible, Laura	Order/Protection from Court Appearance	Order		02/04/2020-11:07	12/07/2023-11:07

Schaible, Laura	NEF(02-04-2020 10:17:34 AM) Proposed Order/Protection fr...	Filing		02/04/2020-10:26	12/07/2023-10:26	
Schaible, Laura	Order/Order Cover Sheet \$25.00	Filing		02/04/2020-10:17	12/07/2023-10:17	
Lenhardt, Robert Cody Jr.	3/2/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		02/03/2020-08:22	12/07/2023-08:22	
Massalon, John A.	3/2/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		02/03/2020-08:22	12/07/2023-08:22	
Taylor, Ionka Sonja	NEF(11-21-2019 03:40:23 PM) Motion/Alter and/or Amend	Filing		11/22/2019-10:21	12/07/2023-10:21	
Abdo, David	Motion/Amend Answer	Motion		11/21/2019-15:40	06/23/2020-15:40	
Schaible, Laura	Order/Scheduling Order	Order		10/22/2019-12:31	12/07/2023-12:31	
Schaible, Laura	Order/Order Filing Fee	Filing		10/14/2019-12:42	12/07/2023-12:42	
Lenhardt, Robert Cody Jr.	10/7/2019_NJR_Roster/Notice of Case Roster Publication Sent	Action		09/12/2019-12:00	12/07/2023-12:00	
Massalon, John A.	10/7/2019_NJR_Roster/Notice of Case Roster Publication Sent	Action		09/12/2019-12:00	12/07/2023-12:00	
Massalon, John A.	9/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2019-08:51	12/07/2023-08:51	
Lenhardt, Robert Cody Jr.	9/23/2019_MOTION_Roster/Notice of Motions ROSTER Publication	Action		07/19/2019-08:51	12/07/2023-08:51	
Lenhardt, Robert Cody Jr.	7/22/2019_NJR_Roster/Notice of Case Roster Publication Sent	Action		06/19/2019-11:10	12/07/2023-11:10	
Massalon, John A.	7/22/2019_NJR_Roster/Notice of Case Roster Publication Sent	Action		06/19/2019-11:10	12/07/2023-11:10	
Massalon, John A.	Defnt Amended Motion/Amend scheduling order & Crt/Srv	Motion		06/14/2019-09:53	07/02/2019-09:53	
Massalon, John A.	Defnt Motion/Amend Scheduling Hearing & Crt/Srv	Motion		06/13/2019-12:33	07/02/2019-12:33	
Taylor, Ionka Sonja	Motion/Motion Filing Fee	Filing		06/12/2019-13:34	12/07/2023-13:34	
Lenhardt, Robert Cody Jr.	4/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/20/2019-08:35	12/07/2023-08:35	
Massalon, John A.	4/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/20/2019-08:35	12/07/2023-08:35	
Schaible, Laura	Order/Order Filing Fee	Filing		02/20/2019-11:44	12/07/2023-11:44	
Lenhardt, Robert Cody Jr.	Roster/Notice of Motions Roster Publication Sent			02/06/2019-13:53	12/07/2023-13:53	
Massalon, John A.	Roster/Notice of Motions Roster Publication Sent			02/06/2019-13:53	12/07/2023-13:53	
Taylor, Ionka Sonja	Motion/Motion Filing Fee	Filing		11/09/2018-13:08	12/07/2023-13:08	
Massalon, John A.	Defnt Motion/Dismiss & Crt/Srv	Motion		11/09/2018-10:10	09/24/2019-10:10	
Schaible, Laura	Summons & Complaint	Filing		01/30/2018-14:37	12/07/2023-14:37	

EXHIBIT C

Settlement Transcript

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Laura and Russell Schaible,
Plaintiffs,

vs. CASE NO. 2018-CP-10-0440

Ilonka Sonja Taylor and David Abdo,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 12:45 p.m. on
June 24, 2021 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
100 Broad Street
Suite 266
Charleston, SC 29401
(843) 367-9596
csmith@adacounty.id.gov

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

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ATTORNEYS FOR THE DEFENDANT:

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Charline@wmalawfirm.net

P R O C E E D I N G S

* * * * *

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4 MR. MASSALON: I'm going to try to read this
5 into the record.

6 THE COURT: Okay.

7 MR. MASSALON: Your Honor, these notes are my
8 summary of it, but I ask everybody to take notes and
9 try to correct me where I get off track.

10 So we have agreed as follows: The Schaibles
11 will be allowed to build a fence or install a
12 landscape buffer along the boundary between Lot 5 and
13 6. They get the discretion whether it's a fence or a
14 buffer. Whether it is a fence or a buffer, it will
15 not begin any closer to Broughton Road than ten feet
16 from the edge of the pavement, and where the existing
17 concrete apron is now, there will be an opening at
18 least 40 feet wide measured from the edge of the
19 apron closest to the Schaibles' property. So the
20 additional ten feet will be on the Broughton Road
21 side of the apron, not on the Schaibles' home site
22 side.

23 MR. LENHARDT: Just a small correction: At
24 most 40 feet, not at least 40 feet.

25 THE COURT: At most, okay.

1 MR. MASSALON: Well, I think it's got to be
2 40 feet. If they want it bigger that's okay with us,
3 but it can't get any less than 40 feet. It's a
4 40-foot opening.

5 MR. LENHARDT: Correct. And if they --

6 MR. MASSALON: Right. If the Schaibles want
7 it to be 41 feet or it works out that it's bigger
8 than 40 feet, that's all right as long as it's not
9 smaller.

10 MR. LENHARDT: Okay.

11 THE COURT: We talked about there being a
12 32-foot apron there.

13 MR. LENHARDT: That already exists, yes.

14 MR. MASSALON: Now, in the event that the
15 Schaibles decide to put in a fence, the finished side
16 of the fence will face my client's property or a
17 finished side. If they put in a landscape buffer, my
18 clients will have the right to trim the side of the
19 buffer that faces their property and the ends,
20 meaning so that that could be closer to Broughton
21 Road -- that it will not be any closer to the edge of
22 the opening.

23 THE COURT: Okay.

24 MR. MASSALON: The Schaibles have the right
25 but not the obligation to put in a gate across the

1 opening. If they put in a gate it will be a sliding
2 gate that goes from side-to-side. It will be
3 electronic and operated remotely with manual override
4 so that my clients are the only ones that have the
5 access in and out of their property.

6 By agreement, the parties will go ahead and
7 stake out the opening, the 40-foot opening, and stake
8 out -- well, I guess we'll not need to stake out the
9 10-foot at this point -- but just stake out the
10 40-foot opening, and they will agree to start using
11 that for ingress and egress from the easement pending
12 the approval and construction of either the
13 landscaping or the fencing.

14 (Off-the-record discussion.)

15 MR. MASSALON: She was just asking about
16 figuring out the 40 feet, but it will be measured 40
17 feet from the edge of the apron to the Schaibles.

18 THE COURT: To the Schaibles back towards
19 Broughton, right?

20 MR. MASSALON: Yes.

21 THE COURT: Okay.

22 MR. MASSALON: The parties have agreed that if
23 the house at 29 is demolished or substantially
24 renovated and the relocation of that opening, that
25 access point is needed for the new house site, the

1 renovated house site, that they will attempt in good
2 faith to negotiate a relocation of the opening. If
3 they are unable to do that, the parties have agreed
4 that they will submit that issue to a single
5 arbitrator under the South Carolina Arbitration Rules
6 with the direction that the arbitrator decides in 60
7 days.

8 THE COURT: All right.

9 MR. MASSALON: That the parties will, through
10 counsel, will work together to get a new plat of the
11 easement showing the easement and the access point
12 and draft a new easement, express easement, outlining
13 these terms to be recorded in the RMC office. The
14 easement will indicate that the access point or the
15 access, the ingress and egress of Broughton Road is
16 for Lot 6 as shown on the 1929 plat.

17 As we just discussed, in the event that the
18 plans of my client require or necessitate the need to
19 drop or move the lot line for Lot 6, that everybody
20 is reserving all arguments for and against the
21 continued existence of the easement after that, so
22 the Schaibles could come in and say, for example,
23 this change overburdens the easement and you should
24 decree that they no longer use it for this purpose,
25 my clients can take the opposite position and

1 argue -- make whatever arguments they want to in
2 favor of the easement or its continued existence.

3 Once the new plat and easement are prepared
4 and recorded, the parties will submit an order to the
5 Court, as I understand it, approving the settlement
6 and dismissing the lawsuit with prejudice. I think
7 those are all the terms.

8 THE COURT: All right.

9 MR. LENHARDT: Two further points, Your Honor,
10 that I believe we discussed in chambers: That --
11 Mr. Massalon may have covered it with the language
12 that it was limited for ingress and egress for the
13 benefit of Lot 6. I think we should make sure that
14 that's on the record that that's what it's intended
15 for without expanding the scope of the original
16 easement. Further, that the 40-foot point of access
17 that would be kept open would be -- in no event would
18 be any closer to the Schaibles' main portion of their
19 property than currently exists.

20 THE COURT: And they --

21 MR. LENHARDT: Correct. If the Defendants
22 reform their property and we mutually agree to move
23 this access, that in no way would there be an
24 argument that it should be moved closer than the
25 access point that currently exists.

1 THE COURT: Very good.

2 MR. MASSALON: And I think that's right, but
3 just to make sure that I understand it -- my
4 understanding of that is that the edge of the 40-foot
5 access that is closest to the Schaibles' house
6 wouldn't be moved any closer?

7 MR. LENHARDT: Yes.

8 THE COURT: Let me ask this question -- that
9 sounds pretty good, and I think what's you-all --
10 once your survey is prepared, I think you said that
11 you are going to take it to the City for approval?
12 Do you want this Court to approve it first if you-all
13 can agree on what the survey looks like so it goes to
14 the City as a court-approved one? You will have less
15 difficulty.

16 MR. LENHARDT: I certainly wouldn't object to
17 that. It might expedite the --

18 THE COURT: My experience is it might --
19 provided you-all are agreeable with what the survey
20 is, I'm happy to approve it and make it an order of
21 the Court and get the City to approve it rather than
22 jump you-all through whatever hoops you might have to
23 go through down there.

24 MR. LENHARDT: I agree.

25 THE COURT: There's always a BZA process that

1 you don't want to have to go through.

2 MR. LENHARDT: Yes, Your Honor. Thank you.

3 THE COURT: I think that will be better.

4 You-all get that done, and we'll approve it and make
5 it the Order of the Court and send it down there.

6 Okay?

7 MR. MASSALON: Thank you.

8 MR. LENHARDT: All right.

9 THE COURT: I was ready to go. Let me just
10 ask, Mr. and Mrs. Schaible, you-all have heard the
11 terms of the agreement. Is that your understanding
12 of the agreement, and are you in agreement with the
13 agreement as put forth by Mr. Massalon and
14 Mr. Lenhardt has adequately contributed to that.

15 MR. SCHAIBLE: That was a lot to take in in a
16 short time, but as far as I heard, yes.

17 THE COURT: Very good. And Ms. Taylor and
18 Mr. Abdo, are you-all in agreement as well?

19 MS. TAYLOR: Yes.

20 THE COURT: Very good. Are you satisfied with
21 your attorney?

22 MS. TAYLOR: I don't know.

23 MR. MASSALON: Never ask that question.

24 THE COURT: Let me tell you, I had a chance to
25 speak at some length with these lawyers back there.

1 They are excellent lawyers. I think they've done a
2 good job. The hardest cases I try, I think, are
3 easement cases. Mr. Massalon was in on one the other
4 day, and I said, This is turning into the one which
5 we just tried, which apparently I've not yet issued
6 my final ruling on. Don't worry. I'm monkeying
7 around with it.

8 If you-all can come to an agreement, it has
9 been my experience in 18 years of doing this that if
10 you-all can come to an agreement, it's probably a lot
11 better of an arrangement than I can create up here on
12 the bench. By definition, an agreement is something
13 you're giving up. You're not 100 percent satisfied,
14 but I can tell you, from the briefs that I've read
15 and from speaking with the lawyers, they were totally
16 prepared and ready to go. We could have tried this
17 case all day and maybe another 90 days or so like
18 Mr. Massalon's other case. I'll give you an answer
19 and the dissatisfied crowd can go up on appeal and
20 see what happens there. Easements are just very
21 difficult cases I find. This is an extremely unusual
22 one in that all three of these lots, 4, 5, and 6,
23 were owned by the same person. So I think I
24 understand why he did what he was doing at the time
25 that he created this easement. Today's times are

1 different than then, and certainly Charleston has
2 changed a lot since then. Most notably the values of
3 properties have gone up significantly since 1929.
4 That's to everybody's benefit around here. I think
5 that's the good news. I want to commend you-all for
6 being able to work together to get this done. Again,
7 I think fences end up making pretty good neighbors.
8 It's probably not a bad idea to get that done and put
9 that aside and move on with our lives. Thank you-all
10 for coming in today. Good to see you.

11 MR. MASSALON: Thank you, Your Honor.

12 MR. LENHARDT: Thank you.

13 THE COURT: Very good. Thank you, gentlemen.
14 When you-all get the survey done I'll just look for a
15 proposed order and have you-all send that in. I
16 would think it would take 60 days or something to get
17 a survey in hand, I think, based on what I'm seeing.

18 (The proceedings were concluded at 12:58 p.m.)
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EXHIBIT D

Dismissal Order

Laura Schaible et al
PLAINTIFF(S)

Ionka Sonja Taylor et al
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:

This action is hereby stricken per SCRPC Rule 40(j).

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 12/07/2023 .

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.



Charleston Common Pleas

Case Caption: Laura Schaible VS Ionka Sonja Taylor

Case Number: 2018CP1000440

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

EXHIBIT E

Motion to Restore

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Laura Schaible and Russell Schaible,

Case No. 2018-CP-10-00440

Plaintiffs,

**MOTION TO RESTORE CASE TO DOCKET
PURSUANT TO RULE 40(j)**

vs.

Ionka Sonja Taylor and David Abdo,

Defendants.

1. The Court struck this case from the docket according to Rule 40(j), SCRCP on December 7, 2023.
2. Rule 40(j) states that on a party's motion, the case may be restored within one year of being stricken.
3. The Plaintiffs move to restore this civil action to the Court's docket as provided by Rule 40(j).

Respectfully Submitted,

s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting St, Ste A
Charleston, SC 29405
(843)727-0060
andy@austengowder.com
Counsel for Plaintiffs

December 2, 2024

EXHIBIT F

Order Substituting Defense Counsel

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Laura M. Schaible and Russell A. Schaible)
)
)
Plaintiffs,)
)
vs.)
)
David W. Abdo and Ilonka Sonja Taylor)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE 9th JUDICIAL CIRCUIT
CASE NO: 2018-CP-10-440

**MOTION/CONSENT ORDER FOR
SUBSTITUTION OF COUNSEL**

Defendants are currently represented in this action by John A. Massalon of Wills, Massalon & Allen, LLC, and by Ellis R. Lesemann of Lesemann & Associates. Defendants now desire to substitute Jennifer K. Williams of the Law Office of Jennifer K. Williams, LLC, as counsel pursuant to Rule 11(b) of the South Carolina Rules of Civil Procedure.

NOW, THEREFORE, upon motion of Jennifer K. Williams along with the consent of John A. Massalon and Ellis R. Lesemann, the Court finds that the motion substituting Jennifer K. Williams as counsel for Defendants and releasing John A. Massalon of Wills, Massalon & Allen, LLC and by Ellis R. Lesemann of Lesemann & Associates should be granted.

AND IT IS HEREBY ORDERED, ADJUDGED AND DECREED that John A. Massalon of Wills, Massalon & Allen, LLC and Ellis R. Lesemann of Lesemann & Associates are hereby formally relieved and discharged as counsel for Defendants and that Jennifer K. Williams of the Law Office of Jennifer K. Williams, LLC be substituted as counsel for the Defendants.

[Signatures continued on the following page.]

SO ORDERED this _____ day of _____, 2025.

Presiding Judge for the 9th Circuit

I SO MOVE:

S/JENNIFER K. WILLIAMS

Jennifer K. Williams, Esq.
Law Office of Jennifer K. Williams, LLC
1000 Johnnie Dodds Blvd. Ste 103-123
Mt. Pleasant, SC 29464
(843) 508-1800
jennifer@jkwilliamsllaw.com

WE CONSENT:

S/JOHN A MASSALON

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jmassalon@wmalawfirm.net

S/ELLIS R. LESEMANN

Ellis R. Lesemann
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418 King Street
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erl@lalawsc.com



Charleston Common Pleas

Case Caption: Laura Schaible , plaintiff, et al VS Ionka Sonja Taylor , defendant, et al

Case Number: 2018CP1000440

Type: Order/Substitution Of Counsel

So Ordered

s/Jennifer B. McCoy #2764

EXHIBIT G

Order to Restore

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Laura Schaible and Russell Schaible,

Plaintiffs,

vs.

Ilonka Sonja Taylor and David Abdo,

Defendants.

Case No. 2018-CP-10-00440

**AMENDED CONSENT ORDER
RESTORING CASE TO THE DOCKET
PURSUANT TO RULE 40(j)**

This matter is before the Court pursuant to Plaintiffs' Motion under South Carolina Rule of Civil Procedure 40(j) dated December 2, 2024, for an Order restoring the case to the docket. The Motion is timely, made within one (1) year of the date this action was stricken. The Defendants consent to the Motion.

Though this Court originally issued an order restoring this matter on February 18, 2025, due to ambiguity in the text of that order, the order is amended and restated as follows.

IT IS ORDERED THAT the case is hereby restored, and the Clerk of Court shall issue a new case number and restore the case to the docket of the Master in Equity for Charleston County, to which the case had been referred by prior order of this Court dated February 12, 2021.

IT IS SO ORDERED.

Presiding Judge

Dated: June 11, 2025

s/ W. Andrew Gowder, Jr.
W. Andrew Gowder, Jr.
Austen & Gowder, LLC
1629 Meeting St, Ste A
Charleston, SC 29405
(843)727-0060
andy@austengowder.com
Counsel for Plaintiffs

I CONSENT:

s/ Jennifer K. Williams
Jennifer K. Williams, Esq.
Law Office of Jennifer K. Williams, LLC
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Mt. Pleasant, SC 29464
(843) 508-1800
jennifer@jkwilliamsllc.com
Counsel for Defendants



Charleston Common Pleas

Case Caption: Laura Schaible , plaintiff, et al VS Ionka Sonja Taylor , defendant, et al

Case Number: 2018CP1000440

Type: Order/Restore Case To Active Docket

So Ordered

s/Mikell R. Scarborough 3062

EXHIBIT H

Clerk of Court's File Book Index

Civil Action 2018CP1000440



Switch View					
Laura Schaible , plaintiff, et al VS Ionka Sonja Taylor , defendant, et al					
Case Number:	2018CP1000440	Court Agency:	Common Pleas	Filed Date:	01/30/2018
Case Type:	Common Pleas	Case Sub Type:	Permanent Injunc 830	File Type:	Non-Jury
Status:	Dismissed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Dismissed per Rule 40J	Disposition Date:	12/07/2023	Disposition Judge:	Scarborough, Mikell R.
Original Source Doc:		Original Case #:		Restore Reason:	Reopen Case for Rule 40J - Original Case
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials							
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents	
Schaible, Laura	NEF(06-12-2025 12:10:11 PM) Order/Restore Case To Active...	Filing		06/12/2025-12:10			
Schaible, Laura	Amended Consent Order Restoring Case to Docket Pursuant Rule	Order		06/12/2025-12:10			
Schaible, Laura	NEF(06-11-2025 11:27:18 AM) Proposed Order/Restore Case ...	Filing		06/11/2025-11:48			
Schaible, Laura	Order/Order to Restore Rule 40J Coversheet	Filing		06/11/2025-11:27			
Schaible, Laura	Decline to Sign:Order/Restore Case To Active Docket	Filing		06/09/2025-12:14			
Taylor, Ionka Sonja	NEF(05-20-2025 09:55:14 AM) Order/Substitution Of Counse...	Filing		05/20/2025-09:55			
Taylor, Ionka Sonja	Order/Substitution Of Counsel f/Defnts	Order		05/20/2025-09:55			
Taylor, Ionka Sonja	NEF(05-15-2025 05:00:02 PM) Notice/Notice of Appearance	Filing		05/16/2025-12:09			
Taylor, Ionka Sonja	Notice/Notice of Appearance	Filing		05/15/2025-17:00			
Abdo, David	Order/Order Cover Sheet \$25.00	Filing		05/15/2025-17:00			
Schaible, Laura	NEF(02-18-2025 01:23:54 PM) Proposed Order/Restore Case ...	Filing		02/18/2025-13:45			
Schaible, Laura	Order/Order to Restore Rule 40J Coversheet	Filing		02/18/2025-13:23			
Lenhardt, Robert Cody Jr.	2/18/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/21/2025-11:15			
Massalon, John A.	2/18/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/21/2025-11:15			
Lesemann, Ellis Reed-Hill	2/18/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/21/2025-11:15			
Gowder, W. Andrew Jr.	2/18/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/21/2025-11:15			
Moore, Patrick Hollingsworth	2/18/2025_MOTION_Roster/Notice of Motions Roster Publication	Action		01/21/2025-11:15			
Schaible, Russell	NEF(12-02-2024 09:32:53 AM) Motion/Restore Case	Filing		12/02/2024-09:38			
Schaible, Laura	Motion/Restore Case to Docket Pursuant to Rule 40(J)	Motion		12/02/2024-09:32	02/18/2025-09:32		
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Schaible, Laura	Notice/Notice of Appearance	Filing		09/23/2024-10:35			
Schaible, Laura	NEF(12-07-2023 11:27:03 AM) Order/Electronic Form 4	Filing		12/07/2023-11:27			
Schaible, Laura	Order: Action Stricken Rule 40j	Order		12/07/2023-11:27			
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Schaible, Laura	Notice/Notice of Appearance	Filing		05/16/2023-10:42	12/07/2023-10:42		
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Lenhardt, Robert Cody Jr.	2/15/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/22/2021-08:52	12/07/2023-08:52		

Massalon, John A.	2/15/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/22/2021-08:52	12/07/2023-08:52	
Lenhardt, Robert Cody Jr.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/11/2021-11:09	12/07/2023-11:09	
Massalon, John A.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		01/11/2021-11:09	12/07/2023-11:09	
Massalon, John A.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		12/16/2020-11:29	12/07/2023-11:29	
Lenhardt, Robert Cody Jr.	1/18/2021_NJR_Roster/Notice of Case Roster Publication Sent	Action		12/16/2020-11:29	12/07/2023-11:29	
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Massalon, John A.	11/30/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		11/03/2020-09:33	12/07/2023-09:33	
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Schaible, Laura	Plaintiffs Answer to CounterClaims	Filing		10/23/2020-10:50	12/07/2023-10:50	
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Taylor, Ionka Sonja	Defendants Am/Answer & Counterclaim to Pltffs Complaint	Filing		09/17/2020-12:39	12/07/2023-12:39	
Taylor, Ionka Sonja	NEF(09-10-2020 02:09:57 PM) Order/Electronic Form 4	Filing		09/10/2020-14:10	12/07/2023-14:10	
Taylor, Ionka Sonja	Order/Defnts Motion/Amend & Supp Motion/Amend Granted	Order		09/10/2020-14:09	12/07/2023-14:09	
Schaible, Laura	NEF(06-12-2020 05:03:09 PM) Memo/Memo in Opposition	Filing		06/15/2020-09:33	12/07/2023-09:33	
Schaible, Laura	Memo/Opp to Mot/Amend Answer & Supplemental Mot/Amend Answer	Filing		06/12/2020-17:03	12/07/2023-17:03	
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Lenhardt, Robert Cody Jr.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/27/2020-11:04	12/07/2023-11:04	
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Lenhardt, Robert Cody Jr.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/26/2020-08:48	12/07/2023-08:48	
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Massalon, John A.	6/1/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		05/26/2020-08:48	12/07/2023-08:48	
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Lenhardt, Robert Cody Jr.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-14:15	12/07/2023-14:15	
Lenhardt, Robert Cody Jr.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-14:15	12/07/2023-14:15	
Massalon, John A.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/18/2020-14:15	12/07/2023-14:15	
Massalon, John A.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/09/2020-11:28	12/07/2023-11:28	
Massalon, John A.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/09/2020-11:28	12/07/2023-11:28	
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Lenhardt, Robert Cody Jr.	4/6/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		03/09/2020-11:28	12/07/2023-11:28	
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Taylor, Ionka Sonja	Supplemental Motion/Amend Answer	Motion		02/25/2020-16:39	06/23/2020-16:39	
Schaible, Laura	NEF(02-04-2020 11:07:36 AM) Order/Protection from Court ...	Filing		02/04/2020-11:07	12/07/2023-11:07	
Schaible, Laura	Order/Protection from Court Appearance	Order		02/04/2020-11:07	12/07/2023-11:07	
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Schaible, Laura	Order/Order Cover Sheet \$25.00	Filing		02/04/2020-10:17	12/07/2023-10:17	
Lenhardt, Robert Cody Jr.	3/2/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		02/03/2020-08:22	12/07/2023-08:22	
Massalon, John A.	3/2/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		02/03/2020-08:22	12/07/2023-08:22	
Taylor, Ionka Sonja	NEF(11-21-2019 03:40:23 PM) Motion/Alter and/or Amend	Filing		11/22/2019-10:21	12/07/2023-10:21	
Abdo, David	Motion/Amend Answer	Motion		11/21/2019-15:40	06/23/2020-15:40	
Schaible, Laura	Order/Scheduling Order	Order		10/22/2019-12:31	12/07/2023-12:31	
Schaible, Laura	Order/Order Filing Fee	Filing		10/14/2019-12:42	12/07/2023-12:42	
	Order-Motion to Dismiss is Denied	Order		09/25/2019-12:50	12/07/2023-12:50	
	Defendants' Memo in Support of Motion to Dismiss, crt/srv	Filing		09/20/2019-09:54	12/07/2023-09:54	
Lenhardt, Robert Cody Jr.	10/7/2019_NJR_Roster/Notice of Case Roster Publication Sent	Action		09/12/2019-12:00	12/07/2023-12:00	

Massalon, John A.	10/7/2019_NJR_Roster/Notice of Case Roster Publication Sent	Action		09/12/2019-12:00	12/07/2023-12:00	
Massalon, John A.	9/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2019-08:51	12/07/2023-08:51	
Lenhardt, Robert Cody Jr.	9/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		07/19/2019-08:51	12/07/2023-08:51	
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Massalon, John A.	7/22/2019_NJR_Roster/Notice of Case Roster Publication Sent	Action		06/19/2019-11:10	12/07/2023-11:10	
Massalon, John A.	Defnt Amended Motion/Amend scheduling order & Crt/Srv	Motion		06/14/2019-09:53	07/02/2019-09:53	
Massalon, John A.	Defnt Motion/Amend Scheduling Hearing & Crt/Srv	Motion		06/13/2019-12:33	07/02/2019-12:33	
Taylor, Ionka Sonja	Motion/Motion Filing Fee	Filing		06/12/2019-13:34	12/07/2023-13:34	
	Plaintiffs' Memo in Opposition to Motion to Dismiss	Filing		04/19/2019-13:58	12/07/2023-13:58	
Lenhardt, Robert Cody Jr.	4/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/20/2019-08:35	12/07/2023-08:35	
Massalon, John A.	4/23/2019_MOTION_Roster/Notice of Motions Roster Publication	Action		03/20/2019-08:35	12/07/2023-08:35	
	Consent Scheduling Order	Order		02/22/2019-11:37	12/07/2023-11:37	
Schaible, Laura	Order/Order Filing Fee	Filing		02/20/2019-11:44	12/07/2023-11:44	
Lenhardt, Robert Cody Jr.	Roster/Notice of Motions Roster Publication Sent			02/06/2019-13:53	12/07/2023-13:53	
Massalon, John A.	Roster/Notice of Motions Roster Publication Sent			02/06/2019-13:53	12/07/2023-13:53	
Taylor, Ionka Sonja	Motion/Motion Filing Fee	Filing		11/09/2018-13:08	12/07/2023-13:08	
Massalon, John A.	Defnt Motion/Dismiss & Crt/Srv	Motion		11/09/2018-10:10	09/24/2019-10:10	
	Amended Answer of the defendants, crt/srv	Filing		09/27/2018-15:59	12/07/2023-15:59	
	Defnts Answer & cert/srv	Filing		04/20/2018-15:10	12/07/2023-15:10	
	Acceptance Of Service	Filing		03/23/2018-11:10	12/07/2023-11:10	
Schaible, Laura	Summons & Complaint	Filing		01/30/2018-14:37	12/07/2023-14:37	

EXHIBIT I

Clerk of Court's File Book Index

Civil Action 2025CP1003402



Switch View

Laura Schaible , plaintiff, et al VS Ionka Sonja Taylor , defendant, et al

Case Number:	2025CP1003402	Court Agency:	Common Pleas	Filed Date:	01/30/2018
Case Type:	Common Pleas	Case Sub Type:	Permanent Injunc 830	File Type:	Non-Jury
Status:	Referred To Master	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties [Judgments](#) [Tax Map Information](#) [Associated Cases](#) [Actions](#) [Financials](#)

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Taylor, Ionka Sonja	NEF(03-04-2026 03:59:13 PM) Notice/Other	Filing		03/04/2026-16:32		
Taylor, Ionka Sonja	Notice/Appeal on Multiple Orders	Filing		03/04/2026-15:59		
Schaible, Laura	NEF(02-05-2026 08:46:50 AM) Order/Electronic Form 4	Filing		02/05/2026-08:47		
Schaible, Laura	Order/Deflt Motion for Reconsideration is Denied	Order		02/05/2026-08:46		
Taylor, Ionka Sonja	NEF(01-23-2026 05:12:36 PM) Motion/Alter and/or Amend	Filing		01/26/2026-09:17		
Abdo, David	Motion/Supplement Pleadings/Crt Srv	Motion		01/23/2026-17:12	01/26/2026-17:12	
Taylor, Ionka Sonja	NEF(01-23-2026 03:45:12 PM) Filing/Other	Filing		01/23/2026-16:42		
Taylor, Ionka Sonja	NEF(01-23-2026 03:29:09 PM) Motion/Other	Filing		01/23/2026-16:01		
Taylor, Ionka Sonja	Exhibit A/Motion to Supplemental Pleadings Pur Rule 15(b)	Filing		01/23/2026-15:45		
Abdo, David	Motion/Reconsider Order filed 1/13/26	Motion		01/23/2026-15:29	01/23/2026-15:29	
Taylor, Ionka Sonja	NEF(01-23-2026 03:21:03 PM) Notice/Notice of Appearance	Filing		01/23/2026-15:26		
Taylor, Ionka Sonja	Notice of Appearance Atty Willis & Van Slambrook	Filing		01/23/2026-15:21		
Taylor, Ionka Sonja	Notice of Appearance/Crt Srv	Filing		01/23/2026-15:21		
Schaible, Laura	NEF(01-13-2026 01:20:33 PM) Master/Order/Other	Filing		01/13/2026-13:20		
Schaible, Laura	Master Order on Easement	Order		01/13/2026-13:20		
Schaible, Laura	NEF(06-12-2025 12:13:49 PM) Notice/Order to Restore to A...	Filing		06/12/2025-12:13		
Schaible, Laura	Amended Consent Order Restoring Case to Docket	Filing		06/12/2025-12:13		
Schaible, Laura	Order/Referred to Master In Equity. No Images	Order		06/12/2025-11:01		

EXHIBIT J

Trial Order

2. On or about May 11, 1940, Charles S. Dwight acquired title to Lot 4, Lot 5, and Lot 6 by deed recorded at Book R51, Page 125 (Defendants' Exhibit 10).
3. On or about September 22, 1959, Charles S. Dwight conveyed Lot 6 to Rebecca M. Palmer by deed recorded at Book R68, Page 10 (Plaintiffs' Exhibit 15). Included in the deed was the following language:

*Together with a permanent easement over a fifteen foot strip of land, a part of Lot 5, Block K, **lying between Lot 4, Block K and Lot 5, Block K**, as shown on the above referred to plat, for the purposes of ingress and egress to Lot 6, Block K, hereinabove described, from Broughton Road.*
(emphasis added)

4. On October 21, 2005, Plaintiffs Russell and Laura Schaible acquired Lot 5 (31 Broughton Road) by deed recorded at Book D559, Page 376 (Plaintiffs' Exhibit 10). Russell Schaible testified that they purchased the property in "fall 2005" and moved in following a "14 month[]" renovation "in the spring of 2006." (Tr. 17:1-2.)
5. On August 27, 2007, Defendants Taylor and Abdo acquired Lot 6 (29 Broughton Road) by deed recorded at Book J637, Page 091 (Defendants' Exhibit 22). Defendant Taylor testified that she and her husband "moved in in February-ish 2008." (Tr. 136:1-2.)
6. Significantly, the 2007 deed into Defendants (Defendants' Exhibit 22) altered the original legal description and describes the access easement as being located "between Lot 4, Block K and Lot 6, Block K"— which correctly identifies the actual location of the driveway, not between Lots 4 and 5 as stated in the originating 1959 deed. Defendant Taylor acknowledged this language during her redirect examination. (Tr. 154:23-155:1.)
7. On January 10, 2018, Defendant Abdo purchased 27 Broughton Road (Lot 7). Defendant Taylor testified they moved from 29 Broughton Road to 27 Broughton Road in approximately February 2018. (Tr. 138:3-6.)

8. Since 2018, the house at 29 Broughton Road has remained vacant. Russell Schaible testified the house "remained vacant and has never been occupied since" and has been used only for "[s]torage." (Tr. 50:5-6, 10.)

B. The Defective Deed

9. The 1959 deed (Plaintiffs' Exhibit 15) claims to establish an easement over "a fifteen-foot strip of land, a part of Lot 5, Block K, lying between Lot 4, Block K and Lot 5, Block K."
10. Lots 4 and 5 share a common boundary line. There is no strip of land "between" them. When asked what is located between Lots 4 and 5, Russell Schaible testified: "No. I mean, because there's no strip of land." When asked what is there, he testified: "Boundary line." (Tr. 28:16-19.)
11. When asked whether it is "physically possible to locate a 15-foot driveway between lots four and five," Russell Schaible testified: "No." (Tr. 27:2-4.)
12. I find the Defendants conceded the point when the Court asked whether the deed was ambiguous: "If we're going to isolate that one piece, we can do that, and we can be very literal and say, well, there can't be 15 foot between lot four and lot five." (Tr. 130:6-9.) In fact, when asked directly, Defendant's counsel stated: "I do not think that it's ambiguous." (Tr. 130:23-24.)
13. The actual driveway is located between Lots 4 and 6—as correctly stated in the 2007 deed to Defendants and confirmed by all witnesses. Russell Schaible testified the 15-foot driveway is located "[b]etween four and six." (Tr. 26:23.)
14. The 1959 deed describes an impossible physical location, and so the Court concludes the easement fails on its face as described within the four corners of the deed.

C. The Parties

15. Defendant Ilonka Sonja Taylor is a practicing attorney who graduated from USC School of Law in 1996. When asked whether she read the 1959 easement before closing on the property, she admitted: "Probably not." (Tr. 146:4-6.)
16. Defendant David Abdo has been a real estate investor since 1988 and owns over 50 properties.
17. The Court finds the knowledge and sophistication of Defendants—an attorney and an experienced property investor—defeats any claim of mistake or ignorance.

D. No Necessity for the Easement

18. Lot 6 has over 90 feet of frontage on Broughton Road. Russell Schaible testified: "The approximate 90 foot of frontage they have to Broughton Road" provides direct access to the property. (Tr. 30:3-4.) The necessity required for an easement by necessity must be actual, real, and reasonable as distinguished from convenient, but need not be absolute and irresistible. *Jowers v. Hornsby*, 292 S.C. 549, 357 S.E.2d 710 (1987) (citing *Steele v. Williams*, 204 S.C. 124, 28 S.E.2d 644 (1944)).
19. When asked whether an easement was necessary to access Lot 6, Russell Schaible testified: "No." (Tr. 29:1-3.)
20. When asked whether Plaintiffs' driveway was "essential" for access to 29 Broughton, Defendant Taylor conceded: "Well, I mean, I can walk anywhere in my yard off of it onto 29 Broughton." (Tr. 153:17-21.)
21. Laura Schaible testified that when they purchased their property, their attorney explained the easement was simply "so that people at 29 and 33 can get in and out of their property through the driveway." (Tr. 99:14-16.)

E. The Planned Property Merger

22. Defendant Taylor testified their plan is to "build a single house over both lots." (Tr. 138:12-13.)
23. Defendant Taylor testified the City requires the lot line to be abandoned: "You either have to adhere apparently to the setbacks or drop the property line." (Tr. 150:9-11. See also Plaintiff Exhibit 16, pg. C102 which shows the construction driveway.)
24. Russell Schaible testified that the Abdos' construction plan depicts a 2,750 sq ft structure with only 1,400 sq ft of living space and a 77 sq ft kitchenette—a "guest wing" to be integrated with 27 Broughton Road. (Tr. 51:6-13.)
25. The construction plans include a gravel "construction drive" providing direct access to Lot 6 from Broughton Road. Defendant Taylor confirmed its existence. (Tr. 151:13-15; Plaintiff Exhibit 16, pg. C102)
26. When asked whether this construction drive could be a permanent access, Defendant Taylor admitted her house is "designed for the entrance to come in on our shared driveway on which we have an easement." I find this shared driveway to be a design choice and not necessary for Defendants' access to Lot 6. (Tr. 153:6-9.)
27. When merged as planned, the combined property would have over 180 feet of frontage on the public Broughton Road, eliminating any necessity argument. (Tr. 51:22-25.)

F. Original Use and Early Relationship

28. Defendants' prior owner, Mrs. Rebecca Palmer and her nurse, "parked in the concrete pad in front of the garage for 29 Broughton." When asked whether Mrs. Palmer made "any use of the driveway other than to go from Broughton Road to their parking pad and back," Russell Schaible testified: "No." (Tr. 30:14-21; 31:3-6.)

29. Laura Schaible testified initially with Defendants, "there were no issues that we noticed at all. . . . [T]hey were using it consistently, how the Palmers did." (Tr. 101:20-23.)
30. Laura Schaible described the early relationship as "very nice," noting: "Sonja and I would share desserts that we made." (Tr. 101:10-14.)
31. Plaintiffs installed a new concrete driveway in April 2008. Russell Schaible testified Defendants "never paid anything for construction or anything we did, which included tying this new driveway in with their parking pad and a drainage system that we installed that really benefited them more than anything." (Tr. 54:24-55:3.)

G. Overburdening the Use of the Driveway

32. Defendant Taylor admitted she characterized her property as a "white trash gauntlet" in an email to Laura Schaible (Plaintiffs' Exhibit 19B). Laura Schaible read the email aloud: "My apologies for the past, present, and future that your guests have to walk the white trash gauntlet to get to your house." (Tr. 104:5-8.) When asked about this characterization, Defendant Taylor acknowledged: "I'm pretty self-deprecating. So I was kidding, but, yes." (Tr. 147:21-22.)
33. Laura Schaible testified the driveway "looked overburdened. It looked like a 7-Eleven because you would drive in and be like, oh, let me get my Slurpee because there's so many cars lined up." (Tr. 104:13-17.)
34. Russell Schaible testified problems began around 2014-2015 when Defendant's Toyota MR2 was parked on the lawn. It "never really moved much" and "sank up to the mud." (Tr. 33:2-5.) When Plaintiff asked Defendant Abdo to move the vehicle, "he declined to do that. He didn't want to consider that at all." (Tr. 33:12-15.)
35. Defendant Taylor admitted her husband is "a car guy" with "more cars than I need, not more than he needs." (Tr. 140:10-11.) She testified the parking pad fits only "two cars" comfortably, and "we already had more than two cars at the time." (Tr. 140:14-18.)

36. Defendant Taylor testified: "I do think that the access point is undefined and, yes, that you could—you know, if you move the house or move the garage or move the entrance that, yes, I think it could be anywhere there." (Tr. 148:14-17.)
37. Defendant Taylor admitted the easement provides for "necessary ingress and egress to the property" and that the word "unrestricted" does not appear. (Tr. 148:18-24.)
38. Russell Schaible testified that since Defendants moved to 27 Broughton Road, "29 has essentially become a parking lot and storage lot for 27." (Tr. 39:8-9.)
39. Russell Schaible testified Plaintiffs have paid over \$16,000 for driveway maintenance since 2005, while Defendants have contributed nothing. (Tr. 54:22-25.)
40. Defendant Taylor admitted that, after the lawsuit was filed, her husband "stopped cleaning up" the driveway "as the Schaibles testified. As far as blowing it and cleaning up grass or leaves, and once they filed suit, he did stop doing that." (Tr. 139:3-6.)
41. Laura Schaible testified Defendants contested their ability to erect a fence, "saying that their easement allowed them unfettered access to their yard from our driveway." (Tr. 106:6-8.)
42. Russell Schaible testified Plaintiffs did not want to sue: "No, not at all," but filed "[b]ecause this situation just gets worse and worse." Of all neighbors, "[t]he only family we ever had an issue with is the Abdos." (Tr. 55:10-19.)

CONCLUSIONS OF LAW

A. Deed Interpretation and the Impossible Description

1. Courts must interpret deeds within the four corners of the document and cannot rewrite unambiguous language. *Springob v. Farrar*, 334 S.C. 585, 590, 514 S.E.2d 135, 138 (Ct. App. 1999).
2. The construction of a clear and unambiguous deed is a question of law. *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987).

3. The 1959 deed language "between Lot 4, Block K and Lot 5, Block K" has only one interpretation—the boundary line between adjacent lots, where no 15-foot strip exists.
4. Because the deed describes an impossible physical location, the easement fails.
5. Reformation requires clear and convincing evidence of mutual mistake. *Kiawah Resort Assocs.*, 421 S.C. 538, 544, 808 S.E.2d 521, 524 (Ct. App. 2017). No evidence of mistake was presented at trial. Any ambiguity has been waived.
6. The law imputes to a purchaser who proposes to acquire title to real estate notice of the recitals contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired. *Carolina Land Co. v. Bland*, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975). The sophistication of Defendants defeats any claim of mistake or ignorance.
7. The Court concludes the easement was void ab initio and never existed as an easement appurtenant to Lot 6.

B. In the Alternative: Easement In Gross

8. Unless an easement has all elements necessary to be appurtenant, it is an easement in gross. *Tupper v. Dorchester County*, 326 S.C. 318, 325-26, 487 S.E.2d 187, 191 (1997).
9. An appurtenant easement must be essentially necessary to the dominant estate. Lot 6's 90-plus feet of frontage defeats the necessity element, as confirmed by Defendant Taylor's admission that she can access her property from the public road without using Plaintiffs' driveway. (Tr. 153:17-21.) See, for example, *Jowers v. Hornsby*, 292 S.C. 549, 550-51, 357 S.E.2d 710, 711 (1987)(“reasonable necessity.”).
10. An easement in gross is a personal privilege that cannot be transferred. *Windham v. Riddle*, 370 S.C. 415, 418, 635 S.E.2d 558, 559 (Ct. App. 2006).

11. If valid, the easement was in gross, granted solely to Rebecca Palmer, was not transferrable, and terminated upon conveyance from Palmer to Defendants. Clearly, at its inception, the easement was not necessary to access Lot 6 and was a personal privilege to use the driveway granted to Rebecca Palmer from Charles Dwight in 1959.

C. As a Further Alternative: Scope Limitations

12. An easement owner cannot materially increase the burden on the servient estate. *Snow v. Smith*, 416 S.C. 72, 86, 784 S.E.2d 242, 249 (Ct. App. 2016).
13. Defendants' use far exceeds what is reasonably necessary. Defendant Taylor's admission that access is "undefined" and can be "anywhere" (Tr. 148:14-17) is unsupported by the deed language, which provides only for the purpose of "necessary ingress and egress." (Tr. 148:18-21.)
14. Use of the driveway to access 27 Broughton Road anywhere along the property line constitutes improper expansion of its purpose.
15. Mrs. Rebecca Palmer used only the parking pad (Tr. 30:14-21; 31:3-6); which established the single point of access to 27 Broughton Road (Lot 6).
16. Plaintiffs have the right to erect a fence on the property line since access to the lot is not unreasonably interfered with and the easement in gross has ended.

ORDER AND JUDGMENT

Based upon the foregoing, it is hereby ORDERED, ADJUDGED, and DECREED:

1. **Primary Relief:** The easement was void ab initio and no such easement exists. Defendants have no right to access Lot 6 over Lot 5.
2. **Alternative Relief:** The easement was in gross, granted solely to Rebecca Palmer, was not transferrable, and no longer exists to access Lot 6 over Lot 5.

3. **Permanent Injunction:** Defendants are enjoined from accessing the easement located on Lot 5 to access 27 Broughton Road (Lot 6).
4. **Costs:** Defendants shall pay the costs of this action.
5. **Further Relief:** The Court shall retain jurisdiction to see that this Order is peacefully followed and for such other relief as the Court deems appropriate to carry out its ruling.

AND IT IS SO ORDERED!

Mikell R. Scarborough
Master In Equity, Charleston County

Charleston, South Carolina
_____, 2026



Charleston Common Pleas

Case Caption: Laura Schaible , plaintiff, et al VS Ionka Sonja Taylor , defendant, et al

Case Number: 2025CP1003402

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

EXHIBIT K

Motion to Reconsider Order

Laura Schaible et al
PLAINTIFF(S)

Ionka Sonja Taylor et al
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:

Upon review and consideration of the Defendant's Motion for Reconsideration, filed January 23, 2026, this Court respectfully DENIES the Defendant's Motion for Reconsideration, except to correct the fact that Rebecca Palmer did not convey Lot 6 to the Defendants; instead, her heirs conveyed Lot 6 to the Defendants.

This Court also respectfully DENIES the Defendant's Motion to Supplement Pleadings, filed January 23, 2026.

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 02/04/2026 .

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.



Charleston Common Pleas

Case Caption: Laura Schaible , plaintiff, et al VS Ionka Sonja Taylor , defendant, et al

Case Number: 2025CP1003402

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

EXHIBIT L

Proposed Rule 60(b)(4) Motion

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)
Laura Schaible and Russell Schaible,)
)
)
Plaintiffs,)
v.)
)
Ilonka Sonja Taylor and David Abdo,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE 9th JUDICIAL CIRCUIT

CIVIL ACTION NO. 2025-CP-10-03402

DEFENDANTS' MOTION FOR RELIEF
FROM JUDGMENT PURSUANT TO
RULE 60(b)(4), SCRPC

For the reasons set forth in the Defendants' Memorandum in Support of Their Motion for Relief from Judgment Pursuant to Rule 60(b)(4), SCRPC, the Defendants hereby move that the Master in Equity's June 12, 2025 order to restore, January 13, 2026 trial order, and February 5, 2026 order denying Defendants' Motion for Reconsideration be declared void and vacated for lack of subject matter jurisdiction.

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Attorneys for Defendants

Ilonka Sonja Taylor and David Abdo

Charleston, South Carolina
April 1, 2026

EXHIBIT M

Proposed Memorandum in Support
of proposed Rule 60(b)(4) Motion

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
))
))
Laura Schaible and Russell Schaible,)
))
))
Plaintiffs,)
v.)
))
Ilonka Sonja Taylor and David Abdo,)
))
))
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE 9th JUDICIAL CIRCUIT

CIVIL ACTION NO. 2025-CP-10-03402

**DEFENDANTS’ MEMORANDUM IN
SUPPORT OF THEIR MOTION FOR
RELIEF FROM JUDGMENT
PURSUANT TO RULE 60(b)(4), SCRPC**

This matter is before the Circuit Court on the Defendants Ilonka Sonja Taylor and David Abdo (“Defendants”) Motion for Relief from Judgment, pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure. For the reasons stated below, the Court should grant Defendants relief from the Master in Equity’s Order to Restore, Trial Order and Motion to Reconsider Order, as described hereinbelow, all of which should be declared void and vacated for lack of subject matter jurisdiction.

PROCEDURAL BACKGROUND

Plaintiffs commenced civil action 2018CP1000440 in Charleston County against Defendants on January 30, 2018 seeking declaratory and injunctive relief regarding the existence, character and scope of an express easement described in a recorded instrument. Defendants answered and asserted a counterclaim for declaratory relief.

On February 12, 2021, an order of reference was issued in civil action 2018CP1000440 by circuit court Judge Deidre Jefferson pursuant to Rule 53, SCRPC based on consent of the parties (the “Order of Reference”)(Exhibit A). The Order of Reference referred all causes of action to the Master in Equity and authorized the Master in Equity to enter final judgment with appeals to be

taken in accordance with the South Carolina Appellate Court Rules.

A date-certain trial in civil action 2018CP1000440 was scheduled to be held in front of the Master in Equity on June 24, 2021. (Exhibit B). The parties did not try the case to verdict that day, but instead respective counsel for the parties read the terms of a settlement among the parties into the record in open court (the “Settlement”). The court reporter’s transcript (the “Settlement Transcript”)(Exhibit C) notes the general terms of the Settlement and the subsequent steps the parties would take to finalize the Settlement, and also that after such subsequent steps were completed the parties would submit a proposed order to the Master in Equity for him to sign approving the Settlement and dismissing the action with prejudice.

On December 7, 2023, the Master in Equity issued an order striking the action pursuant to Rule 40(j), SCRCF (the “Dismissal Order”)(Exhibit D), which was entered in civil action 2018CP1000440.

On December 2, 2024, Plaintiffs filed a motion in civil action 2018CP1000440 to restore the case pursuant to Rule 40(j), SCRCF (the “Motion to Restore”)(Exhibit E).

No order of reference was issued in civil action 2018CP1000440 at any point in time after the Motion to Restore was filed.

On May 20, 2025, circuit court Judge Jennifer McCoy issued a consent order for substitution of counsel for the Defendants (the “Order Substituting Defense Counsel”)(Exhibit F).

On June 12, 2025, the Master in Equity issued a consent order restoring the case pursuant to Rule 40(j), SCRCF, which was entered in the dismissed civil action, 2018CP1000440, and also in a new civil action, 2025CP1003402 (the “Order to Restore”)(Exhibit G).

No order of reference was issued in the new civil action 2025CP1003402. The Order to Restore references the prior Order of Reference that had been entered on February 12, 2021 in the

dismissed civil action, 2018CP1000440.

The Order to Restore stated that it amended and restated a previous order to restore issued on February 18, 2025 and ordered the case to be restored to the Master in Equity's docket. The Charleston County Clerk of Court's file book for civil action 2018CP1000440 does not show the entry of an order to restore on February 18, 2025, but instead shows the submission by Plaintiffs' counsel of a proposed order to restore. (Exhibit H). The Charleston County Clerk of Court's file book for civil action 2025CP1003402 does not show any entries prior to June 12, 2025. (Exhibit I).

The Master in Equity held a trial on October 22, 2025 and entered a judgment in favor of Plaintiffs on January 13, 2026 in civil action 2025CP1003402 (the "Trial Order") (Exhibit J).

Not long after the entry of the Trial Order, Defendants engaged new counsel and timely moved for reconsideration of the Trial Order under Rules 52 and 59(e), SCRCP. The Master in Equity entered an order denying Defendants' motion for reconsideration on February 5, 2026 (the "Motion to Reconsider Order") (Exhibit K).

Defendants filed a timely notice of appeal to the Court of Appeals. Defendants sought leave to file the instant motion, which was granted by the Court of Appeals.

STANDARD

Relief under Rule 60(b), SCRCP lies within the sound discretion of the trial judge. *Paul Davis Sys. v. Deepwater of Hilton Head, LLC*, 362 S.C. 220, 225, 607 S.E.2d 358, 360 (Ct. App. 2004). "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991).

ARGUMENT

I. Circuit Court has jurisdiction to hear this motion.

As an initial matter, this motion should be heard by a presiding circuit court judge rather than the Master in Equity. As discussed in detail below, the Master in Equity's subject matter jurisdiction in civil action 2018CP1000440 ended on December 7, 2023 when it was dismissed, and the Master in Equity never had subject matter jurisdiction in civil action 2025CP1003402. However, even assuming *arguendo* that the Master in Equity did have subject matter jurisdiction to issue any of the subject orders, the power and authority to hear this Rule 60(b)(4) motion would be in the circuit court, because the Master in Equity's jurisdiction would have terminated when he entered the Motion to Reconsider Order. *See Bunkum v. Manor Props., Wachovia Bank of South Carolina, N.A. v. Player*, and *Narruhn v. Alea London Ltd., infra*.

Further, since this Rule 60(b)(4) motion challenges the Master in Equity's subject matter jurisdiction, a presiding circuit court judge hearing the Rule 60(b)(4) motion would not run afoul of the general rule prohibiting judges from the same court overruling each other, because ruling on this motion will not involve any determination of the issues ruled upon by the Master in Equity in the Order to Restore, the Trial Order or the Motion to Reconsider Order. *Narruhn v. Alea London Ltd.*, 404 S.C. 337, 340-341, 745 S.E.2d 90, 92 (2013).

II. Motion is timely.

Defendants' motion is made less than three (3) months after entry of the Trial Order and less than (10) months after the Order to Restore. "Motions under Rule 60(b)(1), (2), or (3) must be made within a reasonable time, but not later than one year of the order taken, and those under (4) and (5) are subject only to the reasonable time limitation." *Narruhn*, 404 S.C. at 340, 745 S.E.2d at 90 (2013). Reasonable time for purposes of a Rule 60(b)(4) motion is determined by the

trial court in its sound discretion. *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996). This motion is timely under the reasonable standard for Rule 60(b)(4) motions and would even be timely under the stricter one (1) year standard for motions brought under Rule 60(b)(1)–(3).

III. The Master in Equity’s orders are void for lack of subject matter jurisdiction.

a. Master in Equity’s power and authority is a question of subject matter jurisdiction.

Rule 60(b)(4), SCRCF permits the court to relieve a party “from a final judgment, order, or proceeding if such judgment, order, or proceeding is void.” *Sanders v. Smith*, 431 S.C. 605, 616, 848 S.E.2d 604, 609 (Ct. App. 2020) (quoting Rule 60(b)(4), SCRCF). “The definition of void under the rule encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *Id.* (quoting *Belle Hall Plantation Homeowner’s Ass’n, Inc. v. Murray*, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (Ct. App. 2017)).

Lack of subject matter jurisdiction renders a judgment void from inception, rather than voidable. *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)(“[a] void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely ‘voidable.’”); *see Ross v. Richland Co.*, 270 S.C. 100, 240 S.E.2d 649 (1978)(generally, a judgment is void only if a court acts without jurisdiction); *see also Genobles v. West*, 23 S.C. 154 (1885)(irregularities which do not involve jurisdiction do not render a judgment void.) “[S]ubject matter jurisdiction refers to a court’s constitutional or statutory power to adjudicate a case.” *Johnson v. S.C. Dep’t of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007).

A master in equity's authority to determine issues referred to him by the circuit court is a question of subject matter jurisdiction. *First Citizens Bank and Trust Company, Inc. v. Taylor*, 431 S.C. 149, 847 S.E.2d 249 (Ct. App. 2020). An order issued by a master in equity is void at inception if the master does not have jurisdiction. *Maybank 2754, LLC v. Zurlo*, 444 S.C. 47, 66, 906 S.E.2d 94, 104 (Ct. App. 2024).

Here, the Master in Equity lacked subject matter jurisdiction when he issued each of the Order to Restore, the Trial Order and the Motion to Reconsider Order, because he had no power or authority to issue those orders. As discussed hereinbelow, the power and authority granted to the Master in Equity under the Order of Reference pursuant to Rule 53, SCRCF terminated when he dismissed the original civil action under Rule 40(j), SCRCF, and the circuit court did not grant any power or authority to him at any point thereafter.

b. Order of Reference determined extent of Master in Equity's power and authority.

Rule 53, SCRCF allows the circuit court to issue an order of reference that refers all or some of the causes of action in a case to a master in equity or special referee. Rule 53(b), SCRCF. Once referred, the master shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. Rule 53(c), SCRCF. In an action where the parties consent to reference, the order of reference must be signed by either a circuit court judge or the clerk of court. Rule 53(b), SCRCF.

A master has no power or authority except that which is given to him by the order of reference. *Bunkum v. Manor Props.*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996). Once a master in equity's duties under an order of reference have concluded, the master no longer has any jurisdiction and all power and authority returns to the circuit court. *Id.*; *Narruhn, supra*; *Wachovia Bank of South Carolina, N.A. v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000)("[t]he

proper construction of [an] order of reference is that it gives the master jurisdiction over the case and all matters arising from it until the master has performed all the duties assigned to him.”)¹

The Order of Reference here referred the causes of action in the original civil action to the Master in Equity and authorized him to enter final judgment. Like the orders of reference in *Bunkum*, *Wachovia Bank* and *Narruhn*, the Order of Reference here did not specifically authorize the Master in Equity to conduct hearings or enter orders after he entered final judgment.² Thus, determination of whether the Master in Equity had subject matter jurisdiction to issue the subject orders depends on whether and when the Master in Equity concluded his duties under the Order of Reference.

c. The Dismissal Order terminated the Master in Equity’s power and authority.

The Master in Equity’s power and authority under the Order of Reference terminated when he dismissed the original civil action under Rule 40(j), SCRCF, because striking an action pursuant to Rule 40(j) is a dismissal of the action.

Rule 40 was amended in 1994 and Rule 40(j) substantially revised the procedure for dismissing a case previously found in Rule 40(c)(3). See Rule 40, SCRCF Notes, Notes to 1994 Amendments (“Rule 40(j) is the final section of the rule and substantially revises the procedure for dismissing a case previously found in Rule 40(c)(3).”) Dismissal pursuant to Rule 40(j) is an

¹ *Narruhn* was decided after the 1999 amendments to Rule 53 that substantially revised Rule 53 to include the current language in Rule 53(c). *Narruhn* did not overrule *Bunkum* and *Wachovia Bank*, both of which were decided prior to the 1999 amendments. *Narruhn* cited *Wachovia Bank* contrasting it on its facts.

² *Wachovia Bank* involved a foreclosure action referred to a master in equity, *Bunkum* involved a quiet title and partition action referred to a master in equity, and *Narruhn* involved supplementary proceedings referred to a special referee. The *Wachovia Bank* opinion held that jurisdiction was not returned to the circuit court when the master in equity entered the foreclosure order, despite it being a final judgment, because the master in equity’s duties under the order of reference had not yet concluded because a judicial sale and possibly surplus funds proceedings would follow the entry of the foreclosure order. The *Bunkum* opinion held that jurisdiction returned to the circuit court after the master issued final judgment ordering partition by sale, because the master had concluded his duties under the orders of reference. Like *Bunkum*, the *Narruhn* opinion held that jurisdiction returned to the circuit court after the special referee issued a final order regarding the supplementary proceedings, because they master had concluded his duties under the orders of reference.

alternative to a voluntary dismissal pursuant to Rule 41(a), SCRCF. *Id.* (“[a] case can also be dismissed voluntarily under Rule 41(a).”) Rule 40(j) allows a party to strike its claims from any docket one time as a matter of right, provided that all parties adverse to the claims agree in writing that they may be stricken and also agree that the statute of limitations for the claims stricken will be tolled if a motion to restore the claims is made within one (1) year after being stricken. Rule 40(j), SCRCF.

Precedent exists interpreting a strike under Rule 40(j) as a dismissal of the action. *Personal Care, Inc. v. Theos*, 426 S.C. 78, 87, 825 S.E.2d 281, 285 (Ct. App. 2019)(“[n]evertheless, we believe this argument ignores the procedural posture of the case as ‘dismissed’”); *Goodwin v. Landquest Dev., LLC*, 414 S.C. 623, 631, 779 S.E.2d 826, 831 (Ct. App. 2015)(“the tolling period would not be necessary if striking the case pursuant to Rule 40(j) were not the equivalent of a dismissal”)(citing *Maxwell v. Genez*, 356 S.C. 617, 591 S.E.2d 26 (2003)(relying on the notes to the 1994 amendments of Rule 40 to interpret Rule 40(j) and applying statutory rules of construction to construction of the South Carolina Rules of Civil Procedure.) After an action is stricken pursuant to Rule 40(j), no pending proceedings exist until and unless a new lawsuit is filed or the causes of action are restored pursuant a motion to restore. *Personal Care*, 426 S.C. at 87, 825 S.E.2d at 285 (“[The] motion to restore [pursuant to Rule 40(j)] was, in essence, equivalent to filing a new lawsuit.”)

Here, the Master in Equity’s power and authority under the Order of Reference ended when he entered the Dismissal Order on December 7, 2023. The Dismissal Order was issued on a Form 4 that clearly indicated it was a final order dismissing the action. *See Cheap-O’s Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 567 S.E.2d 514 (Ct. App. 2002)(a Form 4 order dismissing an action is a final order unless the Form 4 specifically and with certainty indicates that additional specified

action will follow.) Like the Form 4 determined to be a final order in *Cheap-O's*, the Dismissal Order here clearly and unequivocally indicated that it was a final order with no action to follow: the Master in Equity wrote as the “Statement of Judgment” that “[t]his action is hereby stricken per SCRCF Rule 40(j).”, marked the box indicating that the action was stricken pursuant to Rule 40(j), and also marked the box indicating that the Form 4 order “ends” the case. The dismissal of the action was reflected in the clerk of court’s file book by marking the status of civil action 2018CP1000440 as “dismissed” and the disposition as “dismissed per Rule 40(j)”. See Rule 79(f), SCRCF. Once the original civil action was dismissed, the Master in Equity’s duties were concluded and subject matter jurisdiction returned to the circuit court. See *Bunkum* and *Narruhn*, *supra*.³

d. Master in Equity had no power or authority after dismissal.

In order for the Master in Equity to have any power or authority after the original civil action was dismissed, a new order of reference was required to be issued by the circuit court. However, that never occurred.

Only causes of action in *pending proceedings* can be referred to a master in equity. Referral under Rule 53(b) is limited to “actions”, and “actions” are “pending proceedings.” Rule 53(b), SCRCF (“[i]n an *action* where parties consent...[i]n all other *actions*...”) (emphasis added); *Chapek*, 303 S.C. at 28, 397 S.E.2d at 787 (“[a]n ‘action’ is a pending proceeding to determine the rights and liabilities of the parties...”). After the original civil action was dismissed, there was no longer any pending proceeding capable of being referred pursuant to Rule 53. A matter restored pursuant to Rule 40(j) is not the same action that was dismissed but instead is a new action.

³ The parties and the circuit court recognized that subject matter jurisdiction had returned to the circuit court after dismissal, as shown by Judge McCoy’s Order Substituting Defense Counsel which was signed and entered *after* the Motion to Reconsider was filed and while that motion was still pending.

Personal Care, supra; Rule 40, SCRCF Notes, Notes to 1994 Amendments (“[u]pon being restored the case is placed on the General Docket where it proceeds as a *newly filed action* on the General Docket”)(emphasis added). If a restored action was the same action as the dismissed action, the statute of limitations tolling provisions in Rule 40(j) would have no purpose. *See Goodwin, supra*.

As Plaintiff’s filing of the Motion to Restore was the equivalent of filing of a new lawsuit, a new order of reference was required under Rule 53 in order for the Master in Equity to have subject matter jurisdiction. “Absent a reference of any or all issues in an action, the master lacked jurisdiction to enter judgment since nothing can originate before a master.” *Chapek*, 303 S.C. at 28, 397 S.E.2d at 787 (citing *Carpenter v. Bloomer*, 54 N.J.Super. 157, 148 A.2d 497 (1959); 5 Am.Jur.2d Arbitration and Award § 4 at 521 (1962)). “Until an action is commenced, there is no proceeding pending and, thus, nothing to refer.” *Id.* (citing *State v. McQuillan*, 252 Mo. 334, 338–9, 158 S.W. 652, 653 (1913)) (“Before there can be a reference there must be an action pending.”) Since no order of reference was ever issued after the Motion to Restore was filed, the circuit court retained subject matter jurisdiction from that point forward.⁴

e. Consent of parties did not waive or confer subject matter jurisdiction.

Despite the parties’ consent to the Master in Equity’s restoration under Rule 40(j) and their participation in the trial held by the Master in Equity, lack of subject matter jurisdiction cannot be waived through consent or otherwise. *Chabek*, 303 S.C. at 29, 397 S.E.2d at 788 (“We deem as

⁴ Even assuming *arguendo* that the Master in Equity’s duties under the Order of Reference included hearing the Motion to Restore, a new order of reference would still have been required for the Master in Equity to conduct any proceedings and issue any orders in the new civil action. *See Chapek, Personal Care, supra*. Further, the Master in Equity would have been required to restore the case to the circuit court’s General Docket pursuant to Rule 40(j), rather than his own docket. *See* Rule 40, SCRCF Notes, Notes to 1994 Amendments (“[u]pon being restored the case is placed on the General Docket where it proceeds as a newly filed action on the General Docket.”) Once restored to the circuit court’s General Docket, the parties could have then moved for a new order of reference for the restored action by consent pursuant to Rule 53(b), SCRCF.

irrelevant the fact that both parties consented to the reference of the matter and, indeed, tried the matter before the master. Lack of jurisdiction of the subject matter cannot be waived even by consent and therefore such lack can and should be taken notice of by this Court *ex mero motu.*”(citing *Harden v. South Carolina State Highway Department*, 266 S.C. 119, 124, 221 S.E.2d 851, 853 (1976)). Further, Defendants were not required to object to the Master in Equity’s lack of subject matter jurisdiction at the trial or otherwise, because subject matter jurisdiction of a master in equity is an issue that can be raised at any time, even on appeal (*see First Citizens Bank and Trust Company, Inc. v. Taylor*, 431 S.C. 149, 847 S.E.2d 249 (Ct. App. 2020)).

CONCLUSION

For the reasons stated above, the Master in Equity lacked power and authority to hear the Motion to Restore, to issue the Order to Restore, to conduct the trial, to issue the Trial Order, and to issue Motion to Reconsider Order, and therefore those orders are void for lack of subject matter jurisdiction. Defendants Ilonka Sonja Taylor and David Abdo respectfully request that the Court grants this motion and declares void and vacates the Order to Restore, the Trial Order and Motion to Reconsider Order.

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Ilonka Sonja Taylor and David Abdo

Charleston, South Carolina

April 1, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2026-000507
Trial Court Case No. 2025-CP-10-03402

Laura Schaible and Russell Schaible, Respondents,
v.
Ilonka Sonja Taylor and David Abdo, Appellants.

PROOF OF SERVICE

I, the undersigned attorney with the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, certify that I have served all counsel in this action including counsel for Respondents with a copy of the document(s) specified below by electronic mail to each counsel listed below using their primary email address listed in the Attorney Information System.

PLEADING(s): MOTION FOR LEAVE TO FILE 60(b)(4) MOTION WITH LOWER COURT

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By: *s/ Shawn R. Willis*

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Columbia, South Carolina
April 1, 2026