

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-42-5017

GRETCHEN A. ROGERS, AS GAL. FOR MARK A. MALLOY

KENNETH E. LEE AND LAW OFFICES OF LEE AND SMITH, P.A.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for Defendant	<input type="checkbox"/> Plaintiff	<input type="checkbox"/>
		<input type="checkbox"/> Self-Represented Litigant	

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: Summary Judgment Granted.
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- 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 comes before the court on November 13, 2013 on Plaintiff's motion for reconsideration of the court's prior order dismissing this case. With the consent of all concerned, the hearing was held in Greenwood during a CPNJ term. Having considered the argument of counsel, the court declines to modify the previous order.

Plaintiff cites the cases of *Lister v. Nationsbank*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997) and *Bannister v. Hertz Corp.*, 316 S.C. 513, 450 S.E.2d 629 (Ct. App. 1994) for the proposition that, because Plaintiff's injuries manifested themselves in South Carolina, this court should apply South Carolina law as opposed to the law of North Carolina. The court finds that *Lister* and *Bannister* are distinguishable.

The court in *Lister* did state, "Since the [plaintiffs] suffered their financial loss as a result of this misrepresentation in South Carolina, we conclude South Carolina law applies under the choice of law test for torts." 329 S.C. at 455, 494 S.E.2d at 144. However, the court in *Lister* was addressing choice of law questions for the tort of fraudulent misrepresentation. The present case concerns professional malpractice, and for the reasons stated in the original opinion, the law of North Carolina controls.

In *Bannister*, the court restated the established principle that "the substantive law governing a tort action is determined by the state in which the injury occurred." Plaintiff encourages the court should read this maxim as meaning "the state in which the results of the injury manifest themselves." Clearly, the financial harm to Plaintiff manifested itself in South Carolina because Plaintiff is and has always been a citizen of this state. However, the court cannot ignore that the entire transaction which led to Plaintiff's damages occurred in North Carolina. *Lex loci delicti* controls, and the law of North Carolina applies to this action.

For the foregoing reasons, the court declines to alter or amend its prior orders.

Order Information

This order ends does not end the case.

Additional Information for the Clerk :

Complete if judgment requires payment of a sum of money or affects title to real or personal property



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