

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

C.A. NO.: 2025-CP-07-01325

Tony Williams,)

Plaintiff,)

ORDER GRANTING
ANGIE (BERRY) MILLS'
MOTION TO DISMISS AND
SECOND MOTION TO DISMISS

vs.)

Lowes Home Improvement Center
and
Angie Mills,)

Defendants.)

President Judge: Honorable Jocelyn Newman¹Plaintiff's Attorney: *Pro Se*

Defendant's Attorney: Michelle Gaston, Esquire

Date of Hearing: December 12, 2025

Court Reporter: Webex

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SC Court of Appeals

This matter comes before the Court on the motion, and second motion, of the Defendant pursuant to Rule 12(b)(5), SCRCP. The movant was represented at the hearing by counsel, Michelle Gaston, Esquire. The Plaintiff did not appear at the hearing. The Court takes notice that the Plaintiff was advised, in writing, of the hearing and was afforded directions with regard to the hearing format. The Court also takes notice that the Plaintiff did not contact the Court for further instruction.²

¹ The Motions were originally scheduled to be heard by The Honorable Judge Mullen. However, because the Plaintiff drafted and threatened to file a formal complaint against Judge Mullen, she "has recused herself from . . . all other pending cases involving this Plaintiff, Tony Williams." Defense counsel represented that, as of the date of this hearing, the Plaintiff has filed four (4) cases against Lowe's in Beaufort County, and has also filed several suits in Jasper County including one (1) suit regarding legal representation as against Lowe's. It was noted that said Jasper County civil action has been dismissed and the Plaintiff has been ordered to pay sanctions due to his "groundless and frivolous motion and argument" in that matter.

² Subsequent to the hearing, Plaintiff emailed his written objections to this Order to the Court. Those arguments – received on December 16 and 17 – have been considered as well.

The Court notes that, in his filings, Plaintiff asserts that defense counsel has a conflict of interest per Rule 1.7 of the RPC, Rule 407, SCACR. The basis for this assertion appears to be the belief that Defendant Berry is no longer an employee of Lowe's. Defense counsel does not concede that any conflict exists regarding the representation of Lowe's and Berry; regardless, Defense counsel has represented on the record that Defendant Berry is a current employee of Lowe's and, therefore, that there is no conflict of interest.

1. Rule 4(c), SCRCPP states, in pertinent part, that "[s]ervice of summons may be made by the sheriff, his deputy, or by any other person not less than eighteen (18) years of age, ***not an attorney in or a party to the action. . . .***" As was noted by the Court in *Caldwell v. Coppola*, 219 Cal.App.3d 859, 268 Cal.Rptr. 453, 456 (Ct. App. 1990), "The long-standing prohibition on personal service by the opposing party arises from the adversarial interest present in legal actions and the concern for discouraging fraudulent service. 'The common law rule was that an interested party could not serve a summons, the policy behind the rule being that an interested party should not be put in a position whereby he might gain an advantage over his antagonist.'" (citation omitted).

2. According to Rule 4(d)(1), SCRCPP, an individual over the age of 14 and competent, is to be served "to him personally", "by leaving copies thereof at his dwelling house or usual place of abode", "or by delivering a copy to an agent authorized by appointment or by law to receive service of process."

3. Evidence of record shows that on May 27, 2025, the Plaintiff, personally, entered Lowe's #1521 and tried to hand papers to a Lowe's employee, indicating that he was serving Defendant (Berry) Mills. The Plaintiff was advised that he needed to exit the store and no papers

would be taken. The following day, on May 28, 2025, Defendant (Berry) Mills was “honked at” in the parking lot of Lowe’s #1521 by the Plaintiff, personally. The Plaintiff advised Defendant (Berry) Mills that she needed to take the suit papers. Upon being directed to cease, the Plaintiff advised Defendant (Berry) Mills that she “would take” the suit papers. The Plaintiff followed Defendant (Berry) Mills in Lowe’s #1521, dropped the summons and complaint on the customer service desk, and stated to this Defendant “I told you these were for you.” An affidavit submitted by the Defendant informs that Lowe’s #1521 is not Defendant Angie (Berry) Mills’ dwelling house or usual place of abode. Also per the Affidavit, there is no employee of Lowe’s Home Centers, LLC working at Lowe’s #1521 that is the Defendant’s appointed or authorized agent to receive service of process.

4. As of the date of the hearing, no “proof of service” was submitted for either Defendant as required by South Carolina Rule of Civil Procedure 4(g).

5. Service of process “serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant reasonable notice of the action.” *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64, 66 (1996) (citation omitted).

6. The Court finds and concludes that service of process upon Berry (Mills) was insufficient and dismissal is warranted under South Carolina Rule of Civil Procedure 12(b)(5).

7. On June 30, 2025, Plaintiff filed what appears to be a motion to amend his complaint “to the spelling of the defendants [sic] names.” That same day, Plaintiff, at 10:34 p.m., electronically mailed the “Amended Complaint”, with the motion at the top, to Lowe’s’ counsel.

8. The Court finds and concludes that a plaintiff cannot correct the insufficient service of process through electronically mailing an Amended Complaint to defense counsel.

9. The Court finds and concludes that, at the time of the proposed Amended Complaint, no civil action had commenced against the Defendants due to insufficient service of process per SCRCP 3(a) which states, in pertinent part, that “A civil action is commenced when the summons complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law”.

10. The Court finds and concludes that amendment of the complaint herein would be futile and hereby denies any request of the Plaintiff to amend the complaint. *Stokes v. Oconee County*, 441 S.C. 566, 895 S.E.2d 689 (2023).

11. The Court Orders the dismissal of Angie (Berry) Mills in accordance with Rule 12(b)(5) of the South Carolina Rules of Civil Procedure and grants the Defendant’s first and second motion to dismiss accordingly.

IT IS SO ORDERED

Hon. Jocelyn T. Newman, Presiding Judge

_____, 2025.



Beaufort Common Pleas

Case Caption: Tony Williams VS Lowes Home Improvement Center , defendant, et al
Case Number: 2025CP0701325
Type: Order/Dismissal

So Ordered

Jocelyn Newman