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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

G. D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2023-001497

Ronald Carl Cox Appellant,

v.

Michael John Dimmagio Respondent.

APPELLANT'S SECOND AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2022-CP-23-02830
RONALD CARL COX III	)	
	)	
Plaintiff	)	ORDER
	)	
v.	)	
	)	
MICHAEL JOHN DIMAGGIO	)	
	)	
Defendant	)	
	)	

This matter came before the Court on July 24, 2023 on Defendant's Motion to Dismiss the Complaint for failure of the Plaintiff to properly commence the action pursuant to S.C. Code Ann. §15-3-20 and under Rule 3 of the South Carolina Rules of Civil Procedure.

The Defendant argues the Plaintiff failed to serve the Summons and Complaint prior to the expiration of the statute of limitations or, after the expiration of the statute of limitations, within 120 days of the filing of the Summons and Complaint. The Defendant contended that he was therefore entitled to a dismissal of the Summons and Complaint. For the reasons set forth below, the motion is granted.

BACKGROUND

The Plaintiff filed the Summons and Complaint in this matter on May 31, 2022, alleging Assault and Battery, Negligence and Gross Negligence against the Defendant for an incident occurring June 1, 2019. The statute of limitations for Assault and Battery and for Negligence and Gross Negligence in South Carolina is three years. S.C. Code Ann §§ 15-3-530(5), 15-3-535

Because the plaintiff filed, but did not serve, the Summons and Complaint prior to the expiration of the applicable statute of limitations, the Plaintiff is required to serve the Summons

and Complaint within One Hundred and Twenty (120) days of the filing of the Summons and Complaint. S.C. Code Ann. §15-3-20 and Rule 3(a).

In accordance with the affidavit of Steven Evett which was filed with Plaintiff's Motion for Order to Serve by Publication dated September 30, 2022, the Plaintiff's first attempts to serve the Defendant took place on August 31, 2022, the 91st day after the filing of the Summons and Complaint. Attempts at personal service continued until September 8th, 2022, the 99th day after filing of the Summons and Complaint. Evett explains that there were delays in attempting service due to their investigator failing to provide the current address for the Defendant at that time.

Evatt also related that in an August 31, 2022 telephone call, the Defendant instructed him to serve the Summons and Complaint on his attorney, Austin McDaniel. The Defendant related by affidavit that Evatt said nothing about a summons and complaint but said he was with the "Victim's Fund". In any event, Attorney McDaniel advised Evatt on September 2, 2022 that he represented the Defendant in a criminal matter and was not authorized to accept service in a civil matter.

On September 9, 2022, the 100th day after filing of the Summons and Complaint, the Plaintiff filed a Motion to allow Service by Publication. However, no affidavit testifying that service of the summons could not be made after due diligence was attached as required by S.C. Code Ann. §15-3-20 and no action was taken by the Court.

On September 30, 2022, the 121st day after filing of the Summons and Complaint, a new Motion for Service by Publication was filed by the Plaintiff, with one legible and one illegible affidavit. An Order allowing service by Publication was entered by the Court on October 6, 2022, the 127th day after filing of the Summons and Complaint.

Thereafter, the Plaintiff submitted to the Greenville News legal classifieds section the Court's Order for Publication instead of the Summons as required by S.C. Code Ann. § 15-9-740 and it was published on October 27, November 3 and November 10 of 2022, the 148th, 155th and 162d days after filing of the Summons and Complaint.

DISCUSSION

Defendant argues that Plaintiff has failed to serve the Summons and Complaint within 120 days of filing of the same in the day or two before the running of the Statute of Limitations, as required by S.C. Code Ann. §15-3-20 and SCRCivP 3(a).

Plaintiff argues that (1) counsel was led to believe that service was being handled by his staff during a time when he had medical issues; (2) "that a specific instruction by a party to deliver a summons and complaint to someone else, including his counsel, when then delivered, should be considered satisfactory service"; (3) that publication of the incorrect document, when done in good faith, should constitute notice to the Defendant and in fact gives the Defendant greater insight into the civil action against him; (4) that mistakes were made, but were made in good faith and constitute excusable neglect pursuant to Rule 60(b)(1) (dealing with relief from judgments); (5) that he believes the Defendant is not being truthful in his representations that he was unaware of a civil summons and complaint when contacted by Mr. Evatt and in hanging up on Mr. Evatt during a second call.

In order for the Court to conclude that service was sufficient, the Court would need to conclude that (1) the attempted service on an attorney who declined authorization to accept service is, in fact, good service because the Defendant disputedly told a process server to send it to his attorney; or (2) that the deadline for service of process should be equitably tolled due to the Defendant's attempts to evade service. Tolling would be required for the attempts made by

publication which occurred after after the 120 day period allowed for service pursuant to S.C. Code Ann. §15-3-20 and Rule 3(a).

ATTEMPTED SERVICE ON MCDANIEL

Plaintiff argues service was accomplished on Defendant's counsel, Austin McDaniel. However, the evidence indicates that Mr. Dimaggio believed that Mr. Evatt had contacted him about a matter involving the victim's compensation fund, which is a matter that Mr. McDaniel may have handled.

In his affidavit of July 27, 2023, plaintiff's counsel, through hearsay, advises that Steve Evatt called the Defendant and explained that he had a summons and complaint for delivery to him. The affidavit of MR. Dimaggio advises that Mr. Evatt represented he was with the victims' fund. Per the affidavit, Mr. Dimaggio relates that he had received funds from the South Carolina Victims's Compensation Fund for the payment of medical bills he incurred after having been rendered unconscious by a kick to his face and a stomp with the boot heel of the Plaintiff's brother. The Plaintiff and his brother were caused to reimburse the South Carolina Victim's Compensation Fund as a condition of dismissing felony charges against them and as such were well aware of Mr. Dimaggio's involvement with the same. Mr. Dimaggio denies that Mr. Evatt ever explained that he had a civil summons and complaint to serve upon him, and therefore argues he could not have been avoiding service of which he was unaware. Mr. Evatt relates in his affidavit that he advised the Defendant that he had "legal papers" for him but makes no mention of a Summons and Complaint.

Mr. Dimaggio is further provided a voicemail received on his telephone from Steve Evatt, where Mr. Evatt states:

"Yes, Mr. Dimaggio, this is Steve, we spoke yesterday. Uh, you, uh, you gave me your attorney's information however your attorney does not, or he says he is not your attorney, he doesn't rep you, represent you in any matter. Uh, I need you to call me back as soon as possible or I'll just, ah, have to go up and talk to your, your, your employer or something, so, um I'd like to get this taken care of. This has nothing to do with, um, with uh, criminal charges. So, thank you."

This voicemail establishes that Evatt was notified that attorney McDaniel could not accept service. Significantly, Evatt feels it necessary to advise that "this has nothing to do with...criminal charges." A logical reason for him to explain this is that Evatt understood that Dimaggio had reason to believe that Evatt's previous call concerned criminal matters. Coupled with Dimaggio's prior involvement with the SC Victim's Compensation Fund, this lends further credence to Dimaggio's representation in his affidavit that he believed that the call from Evatt involved a criminal matter and that Dimaggio was therefore not on notice of a civil complaint against him. Given this series of events occurred September 1st and 2nd, as established by the emails between Steve Evatt and Austin McDaniel and provided by counsel, one is led to the conclusion that Dimaggio did not refer Evatt to McDaniel because McDaniel was authorized to accept service, but because Dimaggio believed that Evatt's contact with him concerned a criminal matter.

"No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service" Rule 4(j) SCRCP. No such writing was delivered or alleged to have been delivered in this case.

In the absence of a writing evidencing acceptance by attorney McDaniel, a designation by the Defendant that McDaniel is his attorney for service of process, which is denied to have occurred, is insufficient to constitute service in this case. No service was accomplished on attorney McDaniel.

EQUITABLE TOLLING

In order for Service by Publication to be effective in this case, the Court must find that there is a basis to extend the 120 day deadline for service established by S.C. Code Ann. §15-3-20 and SCRCivP 3(a) as every date of publication in this case, even erroneous ones, occurred after 120 days from filing.

§ 15-3-20. General rule as to time for commencement

(A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.

RULE 3. COMMENCEMENT OF ACTION

(a) Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if:

(1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or

(2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

South Carolina courts have addressed equitable tolling of the statute of limitations during the 120 period set forth by the above statute and rule. In those cases, the Court has analyzed

whether to extend the statute of limitations for the time period when the Plaintiff may have been prevented from serving the Defendant.

In Hooper v Ebenezer Sr. Services, 687 S.E.2d 29, 386 S.C. 108 (S.C. 2009), the Supreme Court extended the statute of limitations when the Defendant was unable to be served until 127 days after filing. Hooper is distinguishable from this case because the Defendant there was a nursing facility that had sold and changed names. The Defendant's registered agent for service had moved without a forwarding address and when a residential address for the registered agent was located, the agent had divorced his wife and moved away and his location was unknown. The Plaintiff had made continued attempts to serve the agent over the course of the 120 days and did not fail to serve the Defendant due to their own errors or delay, but diligently and competently attempted service through process servers and two sheriff's offices. In Hooper, the Court noted that the Defendant had failed to comply with state statutes that required an up-to-date registered agent for service. Even then, the Court noted that, "under the unique circumstances of this case, we conclude it is appropriate to equitably toll the statute of limitations for the time Hooper spent in pursuit of Ebenezer's nonexistent agent."

In Pelzer v. State, 662 S.E.2d 618, 378 S.C 516 (Ct. App. 2008) the Court stated that "[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would lose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where-due to circumstances external to the party's own conduct-it would be

unconscionable to enforce the limitation period against the party and gross injustice would result.”

In the present case, the evidence shows a single attempt to serve the Defendant at an address that they were able to verify. Of note, suit was filed on May 31, 2023 the day before the running of the statute of limitations. There appears to be no attempt of service of the summons and complaint until the 91st day after filing suit. According to the evidence put forth, when the attempts began, the employee who performed the skip-trace failed to provide the process servers with the correct address, even though arguably it appears that plaintiff was in possession of that address. The process server attempted to serve an attorney, but the attorney informed the process server he did not have authority to accept service and could not accept service. On September 8, 2023 a single attempt to serve the Defendant at a verified residential address failed, but the process server verified the address on that day through neighbors. The next day the process server was advised by the neighbors that groceries had been delivered to the residence, but no further attempts were made to serve the Defendant at the residence.

Instead, the Plaintiff sought to serve the Defendant through publication. On September 9, 2023 a Petition for publication was filed that failed to provide an affidavit testifying that service of the summons could not be made after due diligence as required by S.C. Code Ann. §15-9-710. In correcting that Petition, on September 30, 2023 a new petition was filed that included an affidavit. Significantly, however, this corrected Petition was filed after the 120 had expired. Also, in that September 30, 2023 Petition, it was alleged that the current place of residence of the Defendant could not be ascertained after the exercise of reasonable diligence. Defendant argued this was not correct and challenged that statement. When the a petition for publication was not filed to comply with statute, the Plaintiff lost 21 days.

The Order for publication was granted October 6, 2023. However, it was then an additional 21 days before a document was first published. And, when publication occurred, an incorrect document was published. Ultimately, the Plaintiff published the summons on December 27, 2022 and on January 10, 2023 proper publication was completed, which, according to the evidence, was 223 days after the filing of the summons and complaint. Defendant further submits that no proof of service by publication was filed with the court.

The Court finds no evidence of evasion of service on the part of Defendant.

CONCLUSION

On the basis of the above, the Defendant's Motion to Dismiss is granted.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Ronald Carl Cox III vs. Michael John Dimaggio
Case Number: 2022CP2302830
Type: Order/Dismissal

So Ordered

G.D. Morgan Jr.

Electronically signed on 2023-09-18 17:46:18 page 10 of 10

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2302830

Ronald Carl Cox, III
PLAINTIFF(S)

Michael John Dimaggio
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 is before the Court on Defendant Michael Dimaggio's Motion to Dismiss. Based on a detailed and lengthy review of the file, the submissions of the parties and oral arguments presented by counsel, Defendant's motion is hereby GRANTED. Counsel for the Defendant is to prepare a proposed order and submit it to the Court via email for review. It is so ordered.

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 08/21/2023 .

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.



Greenville Common Pleas

Case Caption: Ronald Carl Cox III vs. Michael John Dimaggio
Case Number: 2022CP2302830
Type: Order/Electronic Form 4

So Ordered

G.D. Morgan Jr.

Electronically signed on 2023-08-21 14:37:11 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III,

Plaintiff,

v.

Michael John Dimaggio,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2022-CP-23-02830

ORDER FOR PUBLICATION

Having read the Petition for Publication, submitted by the Plaintiff, that this is a civil action, filed pursuant to S.C. Code 63-15-210, and it appearing that the Defendant, Michael John DiMaggio, cannot be located by the Plaintiff after due diligence, (see attached Affidavits of Lauren Lipscombe and Steve Evett), it is ordered that the Defendant, Michael John DiMaggio, shall be served notice of this action by publication pursuant to South Carolina Code 15-9-710 (1976), as amended. The court finds, based on Plaintiff's Petition, The Greenville News, in Greenville, South Carolina is a newspaper of general circulation within Greenville, South Carolina most likely to give the Defendant, Michael John DiMaggio, notice of these proceedings.

IT IS THEREFORE ORDERED that service in this matter be made on the Defendant, Michael John DiMaggio, by publication of Summons and Notice in The Greenville News, a newspaper of general circulation within Greenville, South Carolina once a week for three (3) consecutive weeks and that service of the Summons by mail be waived.

AND IT IS SO ORDERED.

Judge, Common Pleas

Date: _____



Greenville Common Pleas

Case Caption: Ronald Carl Cox III vs. Michael John Dimaggio
Case Number: 2022CP2302830
Type: Order/Publication

So Ordered

s/Letitia H. Verdin, SC Judge 2162

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THIS ITEM
REMOVED
PURSUANT TO
ORDER OF THE
COURT DATED
NOVEMBER 13, 2024

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ORDER OF THE
COURT DATED
NOVEMBER 13, 2024

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)

RONALD CARL COX, III,)
)
Plaintiff,) SUMMONS
)
vs.)
)
MICHAEL JOHN DIMAGGIO,)
)
Defendant.)
)
_____)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office, 211 Pettigru Street, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Daniel J. Farnsworth, Jr.

Daniel J. Farnsworth, Jr.
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Attorneys for the Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

RONALD CARL COX, III,)
))
Plaintiff,)
))
vs.) COMPLAINT
))
MICHAEL JOHN DIMAGGIO,) (ASSAULT AND BATTERY,
) NEGLIGENCE, and
) GROSS NEGLIGENCE)
Defendant.)
) (JURY TRIAL DEMANDED)
))
_____)

TO THE DEFENDANT ABOVE NAMED:

COMES NOW the Plaintiff, who respectfully alleges and would show unto this Court as follows:

1. Upon information and belief, the Defendant, Michael John Dimaggio, (hereinafter "Dimaggio") is a citizen and resident of the State of South Carolina, County of Greenville.
2. The Plaintiff, Ronald Carl Cox, III, (hereinafter "Trey") is a citizen and resident of the State of South Carolina, County of Greenville.
4. On the evening of June 1, 2019, Plaintiff was in downtown Greenville leaving a local restaurant with his date, when he noticed a man (later identified as Defendant Dimaggio) staggering around, appearing to be highly intoxicated.
5. As Trey and his date walked by Defendant, the clearly intoxicated Dimaggio began shouting vulgarities and obscenities at Trey and his date, including sexually suggestive and insulting words directed towards his lady friend.

6. Trey calmly and appropriately ignored Dimaggio's offensive comments and walked along, attempting to avoid continued harassment of he and his date by this drunken stranger.

7. However, the grossly intoxicated Dimaggio followed the couple down the sidewalk and continued shouting obscenities at them, suggesting sexual acts that he would do to his girlfriend.

8. As Dimaggio followed the couple several more blocks, both Trey and his girlfriend asked the drunken Dimaggio to just leave them alone, however Defendant Dimaggio would not stop.

9. As Dimaggio kept following and approaching the couple closer, Trey again asked Dimaggio to stop harassing them, when without warning Defendant Dimaggio suddenly drew back and struck Trey in his face with a closed fist.

10. The unprovoked assault tore open Trey's face above his left eye, causing a laceration that began to bleed down Trey's face and his clothes.

11. Trey and his girlfriend again walked away, trying desperately to get away from this drunken, belligerent harassment.

12. After stopping to tend to his bleeding headwound, Trey notice that Defendant Dimaggio was again approaching them.

13. Dimaggio then grabbed Trey around his neck and pulled him down into a choke hold and dragged Trey to the pavement by the throat.

12. As Plaintiff Trey Cox began to go limp and motionless from the dangerous choke hold Dimaggio had gripped him with, Trey's brother and his friends walked up, unfamiliar with what had been happening.

13. Trey's brother, Grant, quickly realized that his brother was in danger and noticed the blood covering his face and clothing, and subdued Defendant Dimaggio, finally allowing his brother to take a breath and escape from the strangling grip around his throat.

14. Plaintiff Trey Cox suffered serious and painful injuries, and permanent scarring, along with ongoing mental anguish, trauma and anxiety from Defendant Dimaggio's drunken, belligerent, and brutal unprovoked attack.

15. Further, once the Police arrived, they arrested Trey and his brother, Grant, seemingly unaware of who and what had started the incident or that Defendant Dimaggio had been the initial and primary aggressor.

16. After months and months of extraordinary anguish and distress, and incurring tens of thousands of dollars in legal fees, the criminal charges were dismissed against Trey, still leaving him insulted, hurt, indebted and dishonored.

FOR A FIRST CAUSE OF ACTION

Assault and Battery

17. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

18. Defendant Dimaggio had a duty to refrain from violent, unprovoked behavior towards another, and to conduct himself in a peaceful, orderly manner while in public, so as not to disturb the quiet enjoyment of those enjoying Downtown Greenville.

19. Defendant Dimaggio was willful, wanton and reckless as he drunkenly harassed the Plaintiff, and then violently assaulted and physically attacked Trey, being the direct and proximate cause of the physical, mental and pecuniary injuries, harms and losses suffered by Plaintiff

20. Plaintiff Trey Cox suffered tremendous damages at the hands of Defendant Dimaggio, including but not limited to, those harms and losses from:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- b. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- c. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- d. being greatly embarrassed and humiliated, and continuing to be so due to these events;
- d. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- e. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

All of which were the direct and proximate results of the Defendant Dimaggio's wrongful, reckless and drunken conduct as herein alleged.

FOR A SECOND CAUSE OF ACTION

Negligence and Gross Negligence

21. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

22. Defendant Dimaggio had a duty to refrain from appearing in public in a grossly intoxicated state, and behaving in a way that disturbed, insulted, shocked and offended others.

23. Defendant breached his duty by shouting profane, vulgar and lascivious words to various passers by on the evening of June 1, 2019, in downtown Greenville, including Plaintiff Trey Cox and his girlfriend, both of whom he followed, taunted and ultimately assaulted.

24. As a direct and proximate cause of Defendant Dimaggio's gross intoxication, negligence and gross negligence, Plaintiff suffered grave injuries and extraordinary trauma, including:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- d. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- e. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- f. being greatly embarrassed and humiliated, and continuing to be so due to these events;

- g. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- h. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

WHEREFORE, having fully set forth his Complaint herein, the Plaintiff prays that the Court inquire into the matters herein alleged, and render judgment in an amount of actual damages to be determined by a jury, and for such additional exemplary and punitive damages as may be awarded by the trier of fact, for the costs of this action, and for such additional and further relief as may be deemed appropriate by the Court.

Daniel J. Farnsworth, Jr.

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Attorney for Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
RONALD CARL COX III	)	
	)	
Plaintiff	)	
	)	
v.	)	MOTION TO DISMISS
	)	2022-CP-23-02830
MICHAEL JOHN DIMAGGIO	)	
	)	
Defendant	)	
_____	)	

The Defendant, appearing specially for purposes of this Motion and without conceding service of process or personal jurisdiction, will move before this Honorable Court on the tenth (10th) day hereafter or as soon thereafter as he may be heard for an Order Dismissing the Complaint of the Plaintiff for failure to properly commence an action pursuant to S.C. Code Ann. §15-3-20 and SCRCivP 3(a). The Plaintiff has failed to serve the Summons and Complaint in this matter prior to the expiration of the Statute of Limitations or, after the expiration of the Statute of Limitations, within 120 days of the filing of the Summons and Complaint. The Defendant is therefore entitled to a dismissal of the Summons and Complaint.

FACTUAL SUMMARY

The Plaintiff filed the Summons and Complaint in this matter on May 31, 2022, alleging Assault and Battery, Negligence and Gross Negligence against the Defendant for an incident occurring June 1, 2019. The statute of limitations for Assault and Battery and for Negligence and Gross Negligence in South Carolina is three years. S.C. Code Ann §§ 15-3-530(5), 15-3-535

Because the plaintiff filed, but did not serve, the Summons and Complaint prior to the expiration of the applicable Statute of Limitations, the Plaintiff is required to serve the Summons

and Complaint within One Hundred and Twenty (120) days of the filing of the Summons and Complaint. S.C. Code Ann. §15-3-20 and SCRCivP 3(a).

In accordance with the affidavit of Steven Evett which was filed with Plaintiff's Motion for Order to Serve by Publication dated September 30, 2022, the Plaintiff's first attempts to serve the Defendant took place on August 31, 2022, the 91st day after the filing of the Summons and Complaint. Attempts at personal service continued until September 8th, 2022, the 99th day after filing of the Summons and Complaint. Evett explains that there were delays in attempting service due to their investigator failing to provide the current address for the Defendant at that time.

On September 9, 2022, the 100th day after filing of the Summons and Complaint, the Plaintiff filed a Motion to allow Service by Publication. However, no affidavit testifying that service of the summons could not be made after due diligence was attached as required by S.C. Code Ann. §15-3-20 and no action was taken by the Court.

On September 30, 2022, the 121st day after filing of the Summons and Complaint, a new Motion for Service by Publication was filed by the Plaintiff, this time including one legible and one illegible affidavit. An Order allowing service by Publication was entered by the Court on October 6, 2022, the 127th day after filing of the Summons and Complaint.

Thereafter, the Plaintiff erroneously submitted to the Greenville News Legal Classifieds section the Court's Order for Publication instead of the Summons as required by S.C. Code Ann. § 15-9-740 and it was published on October 27, November 3 and November 10 of 2022, the 148th, 155th and 162^d days after filing of the Summons and Complaint.

Ultimately, on December 27, 2022, January 3, 2023 and January 10, 2023, the Summons was published by the Greenville News Legal Classified section, the last day of publication being the 223d day after filing and service of the Summons and Complaint.

The Defendant respectfully requests and Order Dismissing the Summons and Complaint due to the failure of the Plaintiff to properly commence the action.

Respectfully Submitted.

s/ J. Kirkman Moorhead
J. Kirkman Moorhead (SC Bar 7039)
MOORHEAD LeFEVRE PA
2203 North Main Street
Anderson, South Carolina 29621
(864) 225-9155
kirk@mllawyers.com

January 17, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2022-CP-23-01612
	)	
Ronald Carl Cox, III,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR ORDER OF
v.	)	PUBLICATION
	)	
Michael John Dimaggio,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

It is represented that Defendant, Michael John DiMaggio, should be served by publication due to the failure of reasonable attempts to serve Summons upon Defendant. Attorney for Plaintiff, has attempted service on Defendant utilizing the following methods:

A. Personal delivery to the last know addresses:

200 South Academy Street Unit #2427 Greenville, SC 29601

11 Coolidge Avenue, Greenville, SC 29607

201 Carolina Point Parkway Apartment #812 Greenville, SC 29607

B. Enlisting the service of a location agency, which provided a cell phone number, (864)

415-5002, and the addresses listed above.

C. Contacting the Defendant via the cell phone number listed above, speaking with the

Defendant, and asking him to provide a location to accept the summons. After the initial phone call, all other attempts to contact Defendant by phone resulted in no answer.

D. Conducting an internet search, including public index and social media. All of which

produced no new location or contact information.

The undersigned requests that an order be entered directing service and/or notice by publication in the Greenville Journal, which is a newspaper in the county in which the incident occurred.

Respectfully Submitted

PETTUS/FARNSWORTH LLC

Daniel J. Farnsworth Jr.
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Attorney for the Plaintiff

September 9, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2022-CP-23-02830
Ronald Carl Cox, III,	)	
	)	
Plaintiff,	)	PETITION FOR PUBLICATION
	)	
v.	)	
	)	
Michael John Dimaggio,	)	
	)	
Defendant.	)	
	)	
	)	

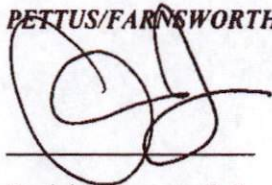
The Plaintiff, complaining on the defendant, would respectfully show unto this honorable court as follows:

1. This is an action for civil litigation under the circumstances that Defendant assaulted Plaintiff on the evening of June 1, 2019.
2. The original complaint was filed on May 31, 2022, in the Court of Common Pleas.
3. Due and diligent search has been made for the Defendant, Michael John DiMaggio, by means outlined in the Affidavit of Lauren Lipscombe, and the Affidavit of Steve Evett, which are attached hereto and incorporated herein by reference.
4. It is necessary to obtain jurisdiction of the Defendant by publication of the Summons and Complaint in a newspaper in general circulation in Greenville County, South Carolina as provided for in S.C. Code Ann, 15-9-740, and the Greenville News is a newspaper of general circulation in said Counties most likely to give the said defendant notice of these proceedings.
5. That service of the Summons by mail be waived because the current place of residence of the Defendant, Michael John DiMaggio cannot be ascertained after the exercise of reasonable diligence.

WHEREFORE, the Plaintiff prays as follows:

1. For this Court's order authorizing service of the Summons and Notice of publication in the Greenville News, such being designated as the newspaper most likely to give notice of these proceedings to the Defendant, Michael John DiMaggio.

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Attorney for the Plaintiff

September 23, 2022

State of South Carolina	)	
	)	
County of Greenville	)	Circuit Court 2022CP2302830

Ronald Carl Cox, III	)	
	)	
vs.	)	Transcript of Record
	)	
Michael John Dimaggio	)	

July 24, 2023
Greenville, South Carolina

B E F O R E:

The Honorable G.D. Morgan, Jr., Judge.

A P P E A R A N C E S:

Daniel J. Farnsworth, Jr., Esquire
Attorney for the Plaintiff

Kirk Morgan, Esquire
Attorney for the Defendant

Amanda J. Orlando
Transcriber

THE COURT: All right. Cox v. Dimaggio, 2022CP2302830.
This is motion to dismiss.

Mr. Morgan, this is your motion. I'll hear from you.

MR. MORGAN: Yes, Your Honor. Your Honor, Kirk Morgan for the defendant, Mr. Dimaggio. Your Honor, this matter arises out of an incident that occurred on June 1st of 2019 in downtown Greenville. The plaintiff, Mr. Cox, is alleged an action for assault and battery against Mr. Dimaggio, as well as the negligence and gross negligence. The statutes of limitation for both of those causes of action are three years.

Your Honor, in the allegations, Mr. Cox alleges that Mr. Dimaggio was intoxicated, that he was harassing of Mr. Cox and his date that evening, and that they ultimately ended up in an altercation where Mr. Cox received a laceration above his left eye. The allegations go on to state that at some later time, shortly thereafter, that Mr. Dimaggio placed Mr. Cox in a chokehold and that Mr. Cox's brother and friend came to his aid at that point.

I will tell you, at that point, I know that Mr. Dimaggio was kicked fully in the face, was rendered unconscious, and was boot-stomped on his head by Mr. Cox's brother. The reason I tell you that is that is a -- I think it's significant because the cause of the summons, the complaint, was filed literally within an hour and 45 minutes of the statute of limitations running on May 31 of 2022 at about 10:15 at night.

I suspect that was related to the fact that Mr. Dimaggio probably had a pretty good counterclaim against Mr. Cox's brother. But the statute of limitations would have been running for that claim.

Nonetheless, the summons complaint was filed at a very late date. And based on the -- we're making a motion to dismiss for failure to commence the action. So in order to commence an action in South Carolina, the civil action, you have to file your summons and complaint, and then actual service must be accomplished within 120 days of filing. And that's pursuant to 15-3-20 of South Carolina Code.

No actual service was ever effected in this case. And if you -- I've provided you with a paper copy of the Court's record. There's really nothing new in here. It's just the Court's record.

THE COURT: Yeah, I've read the file.

MR. MORGAN: Okay. Just to make it a bit easier to review. But on review of that record, there's an affidavit. There's an affidavit from a process server that sort of sets out what had happened. And it appears that the first attempt to serve Mr. Dimaggio with a summons complaint was August 31st. Now, that would have been the 91st day after filing. There's no evidence in the record of any attempt to serve the summons and complaint prior to August 31st. So there's already been a huge amount of time elapsed before there's any

evidence of an attempt to service.

There was a second attempt to serve -- and that service on August 31st was at a former address for Mr. Dimaggio. Interestingly, the affidavit sets out that the reason they were serving at a former address is because the person that performed the skip trace didn't give all the information to the process server. And he had the current address, but he failed to provide it to him.

A second attempt was made on September 1st, which would have been the 92nd day after service, and it was unsuccessful. Thereafter, Mr. Farnsworth, on September 9th, filed a motion for publication. And if you look in the documents I've provided you, it says Bates stamp 9. And that September 9 motion for publication didn't comply with the statute.

And the Court -- because it didn't have any affidavit setting forth the due diligence that had been exercised to attempt to obtain service. So the Court did not act on that September 9 motion, and a subsequent motion for publication was filed on September 30th. Now, September was at least 121 days after the filing of the summons and complaint. And of course, the statute of limitations ran in the day or two after the summons and complaint was filed.

The September 30 motion did include affidavits. And on October 6th, Judge Verdin issued an order allowing publication of the summons for purposes of service. There was a

publication done, and there was publication by The Greenville News on October 27th, November 3rd, and November 10th.

However, what was published was not the summons as per the rule. What was published was the order granting the right for publication. The order of publication was what was published by The Greenville News. And so that, obviously, was likewise incorrect.

We filed our motion to dismiss in this matter on January 17th. That's approximately eight months after the filing of the summons and complaint, and there had been no filing. Even the incorrectly published order wasn't filed in the Court's record until April 25th, which was 329 days after the filing of the summons and complaint.

So Your Honor, based on the failure to comply with Rule 3(a), which requires service within 120 days of a case where the statute of limitations has run, and the service within 120 days of filing, and based on 15-3-20, where there's also a requirement that the that the suit must be served, we would move to dismiss this action for failure to properly commence the action.

THE COURT: All right.

All right. Mr. Farnsworth?

MR. FARNSWORTH: Thank you, Honor. Your Honor, as far as the background and things go, this extremely watered-down version you heard of this assault, not only did this

defendant, we think, and our evidence and witnesses would show, followed, heckled, insulted my client and his girlfriend all downtown through several bars; found out he had did the same thing to some other females there at a bar they all attended. He then strikes my client in the face and then grabs him into a chokehold.

And it's on video where he was on the sidewalk holding him and choking him out, which I don't know if you know, Your Honor, that can kill you within seconds if you don't let go. That's when his brother, my client's brother, happened to walk up with another friend and started defending his brother. And then those two, the Cox boys, got arrested, charged with serious crimes, felonies, had to spend a bunch of money to try to get all that resolved. They did. Got it all dismissed through a PTI program. But our --

THE COURT: So who got arrested?

MR. FARNSWORTH: Both my client and his brother. So my client is -- so this was a serious assault that caused a whole lot of other damages and losses and harms. Here's the thing. We had difficulty serving this defendant because he was avoiding us, Judge. I had people, and they're both here to testify. Steve Evett, who was working -- who actually, once we filed this case -- and I don't think it matters whether we filed it the day before or 100 days before, Your Honor.

But I also want to point out, Judge, back in the time

where this service was being attempted, in the months leading up to it, I was dealing with a spinal issue and had spinal fusion surgery on September 13th. I was out and protected by the courts through the rest of the year. I was relying on my staff to help. They made a few mistakes, Your Honor.

But what I will tell you and what Mr. Evett and Ms. Lipscomb are here to testify to today, if necessary, is that the first attempt at service was Steve Evett called Dimaggio because we had gotten his number, we had gotten what we thought was his current address, and explained to him we have a summons and complaint for you. Do you want us to bring it to you, can you come get it? Just like the sheriff's department does every day.

And he said, what is it? He was told what it was, what it was about. He said, Your Honor, send it to my lawyer. Here's my lawyer's name. Here's the email. So Mr. Evett emailed it to his lawyer. So we're following directions of this client. He knows about it. He knows what it is. Obviously, service is --

MR. MORGAN: For the record, Your Honor, that was his -- that was a different lawyer from me. That was a --

MR. FARNSWORTH: It's a different lawyer, different lawyer.

We got a call back within a day or so from that lawyer. Steve Evett can tell you that he said, oh, I can't accept

service of this. Well, his client had already told us to send it to him, so that's what we did. So when he said we can't accept service, we went ahead and tried to attempt it again. We went out -- I think, Ms. Liscomb and Mr. Evett went out two different times to his home, heard people inside moving around, I think maybe even a dog barking or something; wouldn't come to the door. Talked to neighbors. They said yes, he lives here. He has groceries delivered to his door a lot. He walks his dog every morning at 8:30 or so.

We attempted to serve him again; weren't able to find him. Clearly, he's avoiding us, Judge. He knows what this is. He knows not only that there's a lawsuit, but that -- what it's about, because he was told. And again, we can put the testimony up if you need to hear that.

So in the affidavit -- so then we decided, well, let's go ahead and try to do publication since he's avoiding us. We can fix this. Again, I'm out recovering from double fusion in my cervical spine, and my staff was trying to accomplish all this. The affidavit of publication was put in. I was told, okay, it's put in right. There was a mistake as far as what was actually put in. So the order allowing publication that references the affidavits and all that were put in was done. That was a mistake, instead of an actual copy of the summons, as usually happens.

And then we did it again. And again, at this point, the

time has gone over 120 days, but we're trying from, I guess, in the 80th or 90th day. We're well within our 120 days. Again, it's not like we sat down and did nothing. We were trying to find where he was. We had to hire a skip trace person to get his number; didn't have that. So we were doing these things and trying to attempt to serve, Your Honor.

I understand personal service is required. But when a defendant is avoiding you, knowingly avoiding you, Judge, the rules all change -- well, they don't change, but it allows us some leeway as far as service. But Your Honor, I understand that lawyers don't have to accept service of pleadings. But when the client, when the defendant himself, the party says, oh, this is what this is about, send it to my lawyer, we email it to his lawyer, and then that should be service, Judge.

At this point, he -- at that point, he's avoiding service. And I can, again, put up witnesses to establish all this, too. But much of it is in the affidavits already filed with the Court back then, Judge. So as you know, Judge, if someone wants to try to avoid service, it's really difficult to get them served. The service of publication was attempted. There were some errors. We did it again and paid for it again just to make sure that it's there.

Your Honor, he knows what this is about. He was told from the start, instructed us where to send the copy instead of having him -- instead of placing it in his hand, Judge, and

that's what we did.

THE COURT: All right.

Mr. Morgan?

MR. MORGAN: I would like -- I do have to say that, first of all, all of the information about what was allegedly told to -- I know it would be a lawyer in Anderson, Austin McDaniel. You may know Austin. I don't know. But all of this information that my client was told what this was and so forth is not in the affidavit, not presented to the Court before today, not presented to me.

My client has related to me that he was told that he was being contacted by a victim's advocate. He thought it was a victim's advocate. And we've got a -- he's got a criminal lawyer in Anderson who would deal with that. So I mean, when you get into this he-said-she-said, it creates a real problem in this case. The fact is, and as Mr. Farnsworth has already conceded, there was no service for 120 days.

What he's talking about, I believe, in suggesting that my client was avoiding service, which we absolutely deny he was avoiding service, is he's talking about, essentially, an equitable tolling argument. And there's plenty of law in South Carolina on equitable tolling. I say plenty. There is law on it. And I'm going to read -- this is a criminal case, but it involved a civil action for post-conviction relief. And this is Helzer v. State, and the --

THE COURT: What's the cite?

MR. MORGAN: Pelzer, P-E-L-Z-E-R v. State. I'll give you the cite. It's 662 S.E.2 618. And the Court of Appeals notes that any invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where, due to circumstances external to the party's own conduct, it would be unconscionable to enforce the limitation period against the party and gross injustice would result.

Now, that's a statute of limitations case, but the other equitable tolling gets applied in the cases of service. And this is how they -- but this is how they read. It is very rare. And the fact that -- I mean, we had, in this case, error after error after error. And I am sympathetic to Mr. Farnsworth in running an office and the difficulties running the office. However, those are subjective problems over which we have no control.

And so there's an allegation of avoidance. But if you look at the affidavits, the only allegation in the affidavit

is that they called him and said, we want to meet you. And then they -- which I've already explained what we understood from that -- and then that they went to his house, thought they heard somebody inside, maybe a dog, and that he lived there. Those simply are not the kind of allegations -- I mean, that happens all the times in service of process. It's not unusual at all.

And Mr. Farnsworth alleges that my client's avoiding service. There was one attempt at the correct address per the affidavit. One to serve this summons and complaint before they went for -- before they sought an affidavit of publication, incorrectly the first time, and frankly, never obtained service within 150 days, 160 days.

So I think this is -- it's a very clear case of a failure to properly file and serve a summons and complaint, and therefore the action is improperly commenced. I would note that, at some date, there was actual publication of the summons in the 160-, 165-day range. But there's still no filing in the Court's file of any proof of that. At that point -- at that point, I had begun tracking the case, but the 120 days had long since run.

I just think this is a very, very clear case of, if you take a chance and you wait until the bitter end to file, for whatever reason, you know that. If you don't make attempts to serve for 91 days prior -- after the filing, you know that.

And if it -- and if you then make error after error thereafter, that's not on me. That's not on Mr. Dimaggio. And so this case was not properly commenced and hasn't.

THE COURT: Mr. Farnsworth, let me ask you. Other than that one time on September the 8th, was any other effort made by the process server, other than that one time on September the 8th?

MR. FARNSWORTH: Judge, I --

THE COURT: It looks like from his testimony and his affidavit, Mr. Evett says that he went on September the 8th, and I don't see anywhere else in the affidavit that he attempted service at that address or anywhere else.

MR. FARNSWORTH: Judge, I think they went twice on that day. If I can read this correctly and remember. They interviewed -- they went back, either that same day -- and again, they can clear this up, Judge, if it's not as clear in the affidavit as it needs to be. But they spoke to neighbors. They were told that he was there. They told he still lived there.

Judge, it was clear to us he was avoiding us. He told us -- I think what solves this, Judge -- this is not very clear at all, and I beg to differ with Kirk. He and I were in school together. We've been friends and haven't really seen each other much over the years. But Judge, his own case law provides me relief.

He's talking about this criminal case that deals with statute of limitations, which he alleges deal with service also. I think statute of limitations is a different issue. There's some more strict issues than service, particularly when we have clear evidence, by affidavit and otherwise, of avoiding service by the defendant.

When his case he's just cited says circumstances of individualized hardship would provide relief, Judge, I'm not sure what else could happen when I literally can't use my right arm. I'm in and out of being able to even comprehend certain things with a couple months leadings up to this surgery I had. The surgery, evidently, was much worse than they imagined. And I was granted relief by this Court and General Sessions for the rest of the year. And I still managed to try to, from my bed at home, try to run the law office and have my staff do this.

Sure, they made mistakes, Your Honor, but I think from the phone call from the beginning, when he told the -- Steve Evett tells the defendant what this is and what's it about, he instructs us -- we have an email showing where the email was emailed to the lawyer for him at his instruction. And I don't know how -- and that's not required to be filed, but we have it. We can provide that to --

THE COURT: So the lawyer was served with the summons and complaint?

MR. FARNSWORTH: Yes, sir. It was emailed to him, as instructed by the defendant. And so he gets it, and then we hear later, I guess the same day or the next day, that, oh, wait a minute, I'm not going to handle this --

THE COURT: And that was going to be my next question. So once the summons and complaint was emailed to the lawyer, did the lawyer respond and say, I cannot accept service?

MR. FARNSWORTH: He said, I won't be handling this. I don't know what kind of -- whether he didn't do civil work or not, but he said I'm not going to be able to accept service. So that's when we decided --

THE COURT: That was the next day?

MR. FARNSWORTH: I think it was the next day --

THE COURT: Or --

MR. FARNSWORTH: -- or the same day, Judge, that he was emailed.

THE COURT: And what day was that?

MR. FARNSWORTH: That was --

MR. MORGAN: August 31st (indiscernible) --

MR. FARNSWORTH: It was the same day that he --

THE COURT: August 31st, 2022?

MR. MORGAN: August 31st.

MR. FARNSWORTH: It must have been September 1st, Judge, because we had already -- that's what we had talked to Dimaggio, who had -- or Steve Evett did, who had told him --

given the instructions to send it to him. So whether that --

THE COURT: Let me ask. So if that's September the 1st, then apparently, your process server was put on notice about that, because then on September the 8th, you tried to serve him.

MR. FARNSWORTH: Yes, sir.

THE COURT: So it seems to me that the process server understood that the lawyer may not have been able to accept service because he got the email on September the 1st saying that he couldn't accept. And then, so they did an attempt to serve him on September the 8th.

MR. FARNSWORTH: I think what we did is we instructed Mr. Evett to go ahead and try to serve him since we got that, just to be safe, Judge. We were trying our best to serve this, as you can see all the attempts, the publication, the mistakes that were made while I was recovering from the surgery.

Judge, I think what's important here is notice of it to the defendant. Clearly, he got notice. He instructed us where to send it. Despite whether this attorney was going to handle the case or could officially accept service, I don't think that matters when the defendant tells us where to send it. I think we're off the hook there. I think it's proper service.

THE COURT: He told him where to send it. But he told him to send it to the lawyer, and the lawyer said, no, I

cannot accept service.

MR. FARNSWORTH: He said I'm not going to be handling this and not (indiscernible).

THE COURT: So I think that pretty much ends that part of it.

MR. FARNSWORTH: I don't think it does, Judge.

THE COURT: Why's that?

MR. FARNSWORTH: Because the defendant himself is --

THE COURT: I mean, where in the rules is it -- or the case law that says that, though?

MR. FARNSWORTH: Judge, I don't think there's any specific case on this. I've looked for it. It's part of what I was going this morning before I came in, trying to find cases up to the time --

THE COURT: I can tell you I'm familiar with that area.

MR. FARNSWORTH: All right.

THE COURT: There's no case law --

MR. FARNSWORTH: I know you are, Judge.

THE COURT: -- that says that you can do that.

MR. FARNSWORTH: But I believe that the rules get relaxed, or at least exceptions, when you have evidence that the defendant was trying to avoid you, Judg.

THE COURT: All right. Let me ask you about that, then. The avoidance, sending this September the 8th effort by the process server to go over there, is there any other effort

after that, as far as the avoidance is concerned? I mean, that is sort of a normal thing that defendants -- well, let me rephrase that. It may not necessarily be normal, but it's not an unusual thing where defendants do take some steps sort of to avoid -- that's when you just kind of keep tracking them down.

MR. FARNSWORTH: That's what we were trying to do, Judge, but I think the fact -- and I've had this come up before. I think, if you have evidence that they're trying to avoid you, and also that they've actually indicated to tell you where to send it -- I don't think the -- I don't think the fact that that this lawyer initially said, oh, wait, I don't handle -- I'm not going to be handling this, I'm not going to be able to accept service, I don't think that's valid, Judge, when the client tells us --

THE COURT: Yeah, but the --

MR. FARNSWORTH: -- where to send it.

THE COURT: But the lawyer, though, is saying, I cannot accept service. And I think that part of it, it ends right there. I think that once the lawyer says, I can't accept service, then you got to go to other steps. And that's why I was asking the question, were there any other additional efforts, other than the two -- one or two on September the 8th?

MR. FARNSWORTH: I think there were two there, Judge.

When we got information that he was -- that they believed he was in there, talked to neighbors that the was -- that he did live there, that they see him walking his dog in the mornings, I think I instructed my staff to go out and try to catch him again in the mornings. And that didn't work. I believe Lauren Lipscomb did that, and she can testify to that, Judge, one of my staff members.

But Judge, not only did -- it's not like there was just some communication to this lawyer that Dimaggio instructed us to send it to and he said, oh, sorry. He got a copy of it, Judge. They got a copy of it. I'm sure he had a copy of it. And in fact, Steve Evett explained to him what he had for him and what was involved.

And so I don't think the Court can -- I don't think it's fair, equitable, or proper for the Court to dismiss a case when we're showing all these efforts. And I know there were some mistakes, Judge. But the purpose of this, of the service, is to give notice and a chance to respond. And he had notice from the very first phone call and a copy of it to email. It was not just an email, hey, we were told to send you this summons complaint. It was attached to it. It was there. So his lawyer had it.

And if that lawyer is not going to be -- I just don't think his communication to us that, oh, I won't be handling this case and I can't accept service -- typically, that

happens where someone would call you or me (indiscernible) practicing law and say, hey, can you accept service? And I say, I'm going to have to ask my client. It's always, I have to ask my client.

And sometimes the client will say no, so I've had to do it. You've probably had to do it. Your Honor, Kirk may have done it, where you say, hey, sorry, Phil or Bob, whoever I've been practicing law with on the other side of the courtroom for years, I can't accept it, my client won't let me. So then you know, okay, well, that's not going to be valid. I'm going to have to do something else.

In this case, it's the opposite. The client tells us where to send it. And so whether that attorney was going to defend him or not or the case, he's still served, Judge. He has it. The whole purpose of serving is notice of the pleadings, what you're being accused of --

THE COURT: Well, I mean, I don't think that's necessarily the rule, because otherwise, I mean, look at all the national lawsuits who get service on the paper the day it gets filed and such and such sued for such and such. I don't think that, just because you're on notice of a lawsuit, which you would be on notice of a lawsuit with the headlines in the paper that you just got sued, you still got to -- you still got to serve them.

MR. FARNSWORTH: Sure. No, no. I don't think that's

what we have here, Judge. What we're --

THE COURT: You're talking about notice. See, the --

MR. FARNSWORTH: Sure. Well, I --

THE COURT: The issue is notice, and the key is notice.

MR. FARNSWORTH: I don't think it's notice --

THE COURT: I don't think that is it.

MR. FARNSWORTH: -- with the service of publication, which is allowed, and which we attempted to do. And there was in there -- it was in there, Judge, for him to -- there was an acknowledgment that there was something there being filed.

And really, the notice that's usually put in there, the summons, it doesn't read out the summons and complaint. It just says, hey, there's a summons and complaint in the courthouse file. It's up to you to go get it and answer it, Judge. So the fact that there were some errors in the -- that the affidavit granting the publication, it was mistakenly put in in the newspaper for three weeks, that still gives notice that, hey, there's something here for you to respond to.

And I think what's -- again, relying on Kirk's own case law that he's presented, Judge, if that's not a unique circumstance where the attorney in charge of doing this within the time allowed has gotten -- it's filed, is trying to make service, all these attempts we've talked about, we've actually personally talked to the defendant who instructs us where to send it -- we wouldn't have known what lawyer to send it to

and what email address to use.

So at that point, when he tells us that, he understands what it is and where it's going, tells us where to take it, and that should be service. And so the other attempts were just -- my instructions to them, to let's just make sure we can get this done because I knew there may be a question, Judge. I just think that the --

THE COURT: Wait a minute. Did I hear you right, that when a party tells somebody to send it to my lawyers, are you saying that is service under the rules?

MR. FARNSWORTH: I would think that would qualify, Judge.

THE COURT: How's that?

MR. FARNSWORTH: Because it's as if you had -- it's as if he said, oh, my sister's -- send it to my sister or my sister's coming by to get it.

THE COURT: Let me ask you this. And because, as you know, the rules, they require you to file your proof of service. So let's assume that you did ask a party, let's say the defendant, and he says, send it to my lawyer. How do you file a proof of service of that?

MR. FARNSWORTH: Well, you would file it -- you would file it -- I guess you'd file an affidavit of service just we had -- we filed one. And it was a late filed, Judge. Another mistake we found, that Mr. Evett did attempt to file it in an electronic filing system, the affidavit of service, and it got

rejected. That's something they missed. And that's why we had -- we saw that last week and ended up sending that in. And I know that's late, Judge.

My point is this. This is a serious lawsuit about this defendant, in our opinion, causing serious harm. And to let -- to dismiss a case with merit, or arguably merit -- we have it. And I think, Judge, once Kirk knows more about it, he would maybe not concede. But my point is, this is a case with merit. We've shown all these attempts to serve him. It's not like we've blindsided him and sandbagged and haven't -- and are trying to trick him, Judge.

He was aware of this well within 120 days. He instructed us where to send it. We made these other attempts, Judge. In the meantime, I'm not able to even to really command this ship, doing the best we can over those last several months, especially leading up to September and then after.

And I don't think it's fair for my client to lose his chance at this action because I had a serious medical issue, which falls right under the case law that Kirk mentioned, circumstances of individualized hardship. Judge, if that's not it, going into your neck and taking out your disk and doing all that they did right in your spinal cord and rendering me unable to do much of anything for months. I'm still not healed completely.

But I don't know what else we could have done, Judge,

unless we could have done -- sent out people again, the same people three and four and five and six times. But I knew he would -- but I gathered -- pretty sure he was trying to avoid us. We decided to switch gears and try to do the publication. And that ended up having some errors, but it was done.

I think if you show that the attempts we were making within the 120 days all the way through -- and it's not like --- Judge, I think the 120 days is to give them notice of the -- notice of the lawsuit. And it doesn't mean in the newspaper, Judge. I mean, obviously, there's other ways to find out about things, but as far as a news article, like you mentioned.

But Judge, the only equitable result on this motion of Kirk's is to allow us to go forward, Judge, that we've shown the attempts we've tried to make. It's not my client's fault that I was in surgery and out most of the last year. And it's not his fault -- and if that's not extenuating circumstances, Judge -- and I know that these service rules, there's case law that provides for if you're showing efforts or if there's efforts of avoiding your service, I mean, there's ways to -- in other words, if it's a tie, it goes to the plaintiff, Judge.

I think it's not something that is as strict as the statute of limitations. I think the service, obviously, the statute of limitations, we filed within the time, and then

made all these attempts, Judge. And I think that the fact that when he was told on the phone by Mr. Evett what this was about and told us where to send it, that's effective. We're following his instructions. And basically, Judge, I think that's good. I think that's good service.

I think the service rules -- clearly, the rules are strict, but most all the rules show you there's exceptions to make under different circumstances, Judge. And this is not neglect. I mean, my staff, obviously, they didn't sit around and not do anything. You see all the number of five or six different things that Kirk mentioned that were attempts, although with some errors.

But I think it's enough, Judge, to show service and let us proceed with this case and let him defend it. If he doesn't think it has any merit, then that's good. A summary judgment could take care of it within months. But that's not going to happen, Judge. I just don't think so.

THE COURT: All right.

Mr. Morgan?

MR. MORGAN: Your Honor, I think this situation's a great example of why we have rules and why we have structure to the system, because I'm holding my tongue the whole time Mr. Farnsworth is talking because I disagree with about everything he's saying. And I disagree with how the factual events transpired.

I do want to point out, in the affidavit of Mr. Evett, they relayed one single attempt at service on the proper address. The reason they didn't have the proper address previously is because the skip trace -- gentleman that ran that skip trace didn't give all the addresses to Mr. Evett, the processor. That's not us. That's them.

One single attempt on September 8th. And that's the event where we heard noise and there might have been a dog. But they also said -- and I thought significantly -- they also say they neighbors confirmed he live there, he walks his dog, and he receives grocery deliveries there. Yet there is never a second attempt set forth in the affidavit or by Mr. Farnsworth in just speaking today to serve at that address. There's one attempt, one failed attempt, never a second attempt.

And then they start the process of trying to do a publication. Your Honor, I'm at a little bit of a loss. I mean, Austin McDaniel was his criminal defense lawyer. I know Austin very well because one of the reasons I know Austin, he sends all of his civil cases to me because he doesn't do them.

If you read the affidavit again -- let's read what Mr. Evett says under oath. I attempted calling Mr. Dimaggio. He answered the phone and confirmed who he was. My (indiscernible) doing this was to confirm we were essentially tracking the right individual using the skip trace software

through (indiscernible) Recovery Services. I (indiscernible) had some legal papers for him, at least (indiscernible).

Now, that's -- either omits a great deal of information that's been relayed to the Court today or that's the truth. And if that's the truth and he had some legal papers for him and my client believes that victim's advocate information, that does go to his criminal attorney. Your Honor, I'm sympathetic to Mr. Farnsworth. I wouldn't want to be in this situation. But this is not -- this situation is not one that is nearly as muddy as he's relaying to you.

THE COURT: All right.

MR. FARNSWORTH: I'm happy to put up Steve Evett to testify.

THE COURT: No, I'm --

MR. FARNSWORTH: (Indiscernible).

THE COURT: Yeah, and I've heard enough arguments and I reviewed the file. I'm going to review it again from y'all, and I'll just take it under advisement. I'll have a decision this week for you, but I'll take a look at it and I'll let you know.

MR. MORGAN: Thank you, Your Honor.

MR. FARNSWORTH: Thank you, Your Honor.

THE COURT: Thank you both.

(End of Transcript of Record)

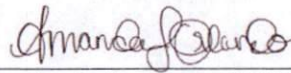
CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of Greenville)

I, AMANDA J. ORLANDO, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 24th day of July, 2023.

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

September 28, 2023



Amanda J. Orlando, CDLT-260
Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III,

Plaintiff,

v.

Michael John Dimaggio,

Defendant.

IN THE COURT OF COMMON PLEAS

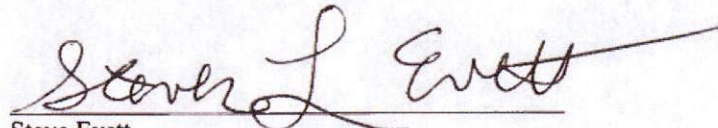
C.A. No.: 2022-CP-23-01612

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Summons was served upon C. Austin McDaniel, Attorney for Defendant, in the above-entitled action this 31st day of August 2022, via electronic mail:

Austin McDaniel Law
523 N. Main Street
Anderson, SC 29621
austin@austinmcdaniellaw.com

**Farnsworth Law Offices
211 Pettigru Street
Greenville, SC 29601**



Steve Evett
Litigation Manager for Dan J. Farnsworth

September 1, 2022



Dan Farnsworth <dan@farnsworthlawoffices.com>

2022CP2302830 Ronald Cox vs. Michael Dimaggio

1 message

Lauren Lipscomb <Lauren@farnsworthlawoffices.com>

Thu, Sep 15, 2022 at 2:31 PM

To: lverdinsc@sccourts.org, lverdinc@sccourts.org, Dan Farnsworth <Dan@farnsworthlawoffices.com>, Steve Evett <steve@farnsworthlawoffices.com>

Good afternoon, Judge Verdin

I certainly hope this email finds you well. Please see attached Summons and Complaint, Motion for Order of Publication, Cover Sheet and attached Affidavits by myself and another staff. I am aware that there are no hearing dates until December 5th, but Mr. Farnsworth asked that I send these to you in a last attempt in hopes you'd be willing to read these over and sign off on the Order of Publication.

We have had many failed attempts in serving Mr. Dimaggio and we are running out of time in regards to the service. Mr. Farnsworth is wondering if these are something you can look over before December 5th? Ms. Caldwell notified me that is the next hearing date. He normally would not ask for a favor like this, but Service but Publication is the only way we will be able to properly serve him in time. Mr. Farnsworth sincerely appreciates your consideration in regards to this matter.

I hope you have a fantastic remainder of your week and a wonderful weekend.

Best Regards,

Lauren Lipscomb

--

Lauren Lipscomb
Firm Manager
Pettus // Farnsworth, LLC
211 Pettigru Street
Greenville, SC 29601
Post Office Box 8719
Greenville, South Carolina 29604
Phone: (864) 250-9119
Fax: (864) 250-9120
adminflo@farnsworthlawoffices.com

5 attachments

-  **L Affidavit for Dimaggio.pdf**
97K
-  **Scanned from a Xerox Multifunction Printer-4.pdf**
51K
-  **Scanned from a Xerox Multifunction Printer-2.pdf**
92K
-  **Scanned from a Xerox Multifunction Printer-3.pdf**
135K
-  **DOC-84.pdf**
53K

THIS ITEM
REMOVED
PURSUANT TO
ORDER OF THE
COURT DATED
NOVEMBER 13, 2024

THIS ITEM
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PURSUANT TO
ORDER OF THE
COURT DATED
NOVEMBER 13, 2024

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REMOVED
PURSUANT TO
ORDER OF THE
COURT DATED
NOVEMBER 13, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No.: 2022-CP-23-01612
	)	
Ronald Carl Cox, III,	)	
	)	
Plaintiff,	)	
	)	MOTION FOR ORDER OF
v.	)	PUBLICATION
	)	
Michael John Dimaggio,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	
	)	

It is represented that Defendant, Michael John DiMaggio, should be served by publication due to the failure of reasonable attempts to serve Summons upon Defendant. Attorney for Plaintiff, has attempted service on Defendant utilizing the following methods:

- A. Personal delivery to the last know addresses:
 - 200 South Academy Street Unit #2427 Greenville, SC 29601
 - 11 Coolidge Avenue, Greenville, SC 29607
 - 201 Carolina Point Parkway Apartment #812 Greenville, SC 29607
- B. Enlisting the service of a location agency, which provided a cell phone number, (864) 415-5002, and the addresses listed above.
- C. Contacting the Defendant via the cell phone number listed above, speaking with the Defendant, and asking him to provide a location to accept the summons. After the initial phone call, all other attempts to contact Defendant by phone resulted in no answer.
- D. Conducting an internet search, including public index and social media. All of which produced no new location or contact information.

The undersigned requests that an order be entered directing service and/or notice by publication in the Greenville Journal, which is a newspaper in the county in which the incident occurred.

Respectfully Submitted

PETTUS/FARNSWORTH LLC

Daniel J. Farnsworth Jr.
Daniel J. Farnsworth Jr.
Pettus/Farnsworth LLC
P O Box 8719
Greenville SC 29604
Phone: 864.250.9119
Fax: 864.250.9120
Dan@Farnsworthlawoffices.com

Attorney for the Plaintiff

September 9, 2022

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III

Plaintiff(s)

vs.

Michael John Dimaggio

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2022 -CP- 230-2830

Submitted By: Daniel J. Farnsworth, Jr.
Address: 211 Pettigru Street, Greenville, South Carolina 29601

SC Bar #: 6922
Telephone #: 864.250.9119
Fax #: 864.250.9120
Other: _____

E-mail: Dan@FarnsworthLawOffices.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver Warranty (160)
☐ Employment Discrep (170)
☐ Employment (180)
☐ Other (199)
☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Torts - Professional Malpractice
☐ Denial Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case # <u>20-NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) _____
☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Reinstatement Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture--Consent Order (850)
☐ Other (899) _____ | ☐ Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Assault/Battery (370)
☐ Slander Libel (380)
☐ Other (399) _____
☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____ | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____
☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SC DOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: _____

SCCA / 234 (04/2021)

Page 1 of 2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)

RONALD CARL COX, III,)
)
Plaintiff,) SUMMONS
)
vs.)
)
MICHAEL JOHN DIMAGGIO,)
)
Defendant.)
)
_____)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office, 211 Pettigru Street, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Daniel J. Farnsworth, Jr.

Daniel J. Farnsworth, Jr.
PETTUS / FARNSWORTH, LLC
211 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 250-9119
Facsimile: (864) 250-9120
Email: Dan@Farnsworthlawoffices.com
Attorneys for the Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

RONALD CARL COX, III,)
))
Plaintiff,)
))
vs.) COMPLAINT
))
MICHAEL JOHN DIMAGGIO,) (ASSAULT AND BATTERY,
) NEGLIGENCE, and
) GROSS NEGLIGENCE)
Defendant.)
) (JURY TRIAL DEMANDED)
))
_____)

TO THE DEFENDANT ABOVE NAMED:

COMES NOW the Plaintiff, who respectfully alleges and would show unto this Court as follows:

1. Upon information and belief, the Defendant, Michael John Dimaggio, (hereinafter "Dimaggio") is a citizen and resident of the State of South Carolina, County of Greenville.

2. The Plaintiff, Ronald Carl Cox, III, (hereinafter "Trey") is a citizen and resident of the State of South Carolina, County of Greenville.

4. On the evening of June 1, 2019, Plaintiff was in downtown Greenville leaving a local restaurant with his date, when he noticed a man (later identified as Defendant Dimaggio) staggering around, appearing to be highly intoxicated.

5. As Trey and his date walked by Defendant, the clearly intoxicated Dimaggio began shouting vulgarities and obscenities at Trey and his date, including sexually suggestive and insulting words directed towards his lady friend.

6. Trey calmly and appropriately ignored Dimaggio's offensive comments and walked along, attempting to avoid continued harassment of he and his date by this drunken stranger.

7. However, the grossly intoxicated Dimaggio followed the couple down the sidewalk and continued shouting obscenities at them, suggesting sexual acts that he would do to his girlfriend.

8. As Dimaggio followed the couple several more blocks, both Trey and his girlfriend asked the drunken Dimaggio to just leave them alone, however Defendant Dimaggio would not stop.

9. As Dimaggio kept following and approaching the couple closer, Trey again asked Dimaggio to stop harassing them, when without warning Defendant Dimaggio suddenly drew back and struck Trey in his face with a closed fist.

10. The unprovoked assault tore open Trey's face above his left eye, causing a laceration that began to bleed down Trey's face and his clothes.

11. Trey and his girlfriend again walked away, trying desperately to get away from this drunken, belligerent harassment.

12. After stopping to tend to his bleeding headwound, Trey notice that Defendant Dimaggio was again approaching them.

13. Dimaggio then grabbed Trey around his neck and pulled him down into a choke hold and dragged Trey to the pavement by the throat.

12. As Plaintiff Trey Cox began to go limp and motionless from the dangerous choke hold Dimaggio had gripped him with, Trey's brother and his friends walked up, unfamiliar with what had been happening.

13. Trey's brother, Grant, quickly realized that his brother was in danger and noticed the blood covering his face and clothing, and subdued Defendant Dimaggio, finally allowing his brother to take a breath and escape from the strangling grip around his throat.

14. Plaintiff Trey Cox suffered serious and painful injuries, and permanent scarring, along with ongoing mental anguish, trauma and anxiety from Defendant Dimaggio's drunken, belligerent, and brutal unprovoked attack.

15. Further, once the Police arrived, they arrested Trey and his brother, Grant, seemingly unaware of who and what had started the incident or that Defendant Dimaggio had been the initial and primary aggressor.

16. After months and months of extraordinary anguish and distress, and incurring tens of thousands of dollars in legal fees, the criminal charges were dismissed against Trey, still leaving him insulted, hurt, indebted and dishonored.

FOR A FIRST CAUSE OF ACTION

Assault and Battery

17. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

18. Defendant Dimaggio had a duty to refrain from violent, unprovoked behavior towards another, and to conduct himself in a peaceful, orderly manner while in public, so as not to disturb the quiet enjoyment of those enjoying Downtown Greenville.

19. Defendant Dimaggio was willful, wanton and reckless as he drunkenly harassed the Plaintiff, and then violently assaulted and physically attacked Trey, being the direct and proximate cause of the physical, mental and pecuniary injuries, harms and losses suffered by Plaintiff

20. Plaintiff Trey Cox suffered tremendous damages at the hands of Defendant Dimaggio, including but not limited to, those harms and losses from:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- b. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- c. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- d. being greatly embarrassed and humiliated, and continuing to be so due to these events;
- d. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- e. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

All of which were the direct and proximate results of the Defendant Dimaggio's wrongful, reckless and drunken conduct as herein alleged.

FOR A SECOND CAUSE OF ACTION

Negligence and Gross Negligence

21. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

22. Defendant Dimaggio had a duty to refrain from appearing in public in a grossly intoxicated state, and behaving in a way that disturbed, insulted, shocked and offended others.

23. Defendant breached his duty by shouting profane, vulgar and lascivious words to various passers by on the evening of June 1, 2019, in downtown Greenville, including Plaintiff Trey Cox and his girlfriend, both of whom he followed, taunted and ultimately assaulted.

24. As a direct and proximate cause of Defendant Dimaggio's gross intoxication, negligence and gross negligence, Plaintiff suffered grave injuries and extraordinary trauma, including:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- d. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- e. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- f. being greatly embarrassed and humiliated, and continuing to be so due to these events;

- g. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- h. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

WHEREFORE, having fully set forth his Complaint herein, the Plaintiff prays that the Court inquire into the matters herein alleged, and render judgment in an amount of actual damages to be determined by a jury, and for such additional exemplary and punitive damages as may be awarded by the trier of fact, for the costs of this action, and for such additional and further relief as may be deemed appropriate by the Court.

Daniel J. Farnsworth, Jr.

Daniel J. Farnsworth, Jr.
PETTUS / FARNSWORTH, LLC
211 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 250-9119
Facsimile: (864) 250-9120
Email: Dan@Farnsworthlawoffices.com
Attorney for Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Affidavit of
Steven Evett

PERSONALLY APPEARED BEFORE ME STEVEN EVETT WHO FIRST BEING DULY
SWORN, TESTIFIES AS FOLLOWS:

I, Steven Evett, Litigation Manager for Daniel J. Farnsworth, Jr. have made many service attempts in regard to the service of a Summons and Complaint for Case No. #2022CP2302830. I have personally gone to three addresses provided by Jack Farnsworth, with Managed Recovery Solutions, INC in an attempt to serve Mr. DiMaggio. Mr. Jack Farnsworth used skip trace software to locate three different addresses for him; 1. 200 S. Academy St. Unit #2427 Greenville, SC 29601. 2. 11 Coolidge Ave. Greenville, SC 29607. 3. 201 Carolina Point Parkway, Apt #812 Greenville, SC 29607.

On August 31, 2022, I visited his previous addresses, 201 Carolina Point Parkway, Apartment #812, Greenville, South Carolina 29607, and 11 Coolidge Avenue, Greenville, SC 29601. I spoke with the current resident at 11 Coolidge Avenue and he advised me that Mr. DiMaggio no longer resided at that address.

On September 1, 2022, I attempted calling Mr. DiMaggio. He answered the phone and confirmed who he was. My main point of doing this was to confirm we were essentially 'tracking' the correct individual using skip trace software through Managed Recovery Solutions, INC. I explained that I had some legal papers for him, at which time Mr. Dimaggio ended the call. Mr. DiMaggio has not responded to any other calls.

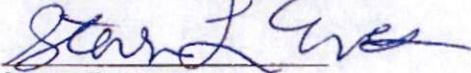
On September 8, 2022, I joined a co-worker attempting to serve Mr. DiMaggio at his current address, 200 S. Academy St Unit #2427 Greenville, South Carolina 29601. We spoke with 4 of his surrounding neighbors. All four neighbors confirmed that Mr. DiMaggio resided at 200 S. Academy St. Unit #2427 Greenville, South Carolina 29601. We knocked at his door and heard movement in his residence. We heard him grab some keys from nearby the door. Together, we were at Mr. DiMaggio's residence for at least 30 minutes. Two of his neighbors provided us with their cell phone numbers and texted me the next morning to let me know he had ordered groceries and they were at his door.

The only reason why there is such a huge time difference between my initial visit at his previous residence, 201 Carolina Point Parkway, and 200 S. Academy Street is because Mr. Jack Farnsworth originally only provided us with two addresses until we asked for the full report.

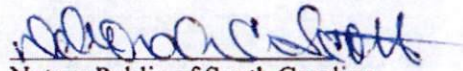
Our Office Manager, Lauren Lipscombe, has also attempted to contact and locate Mr. DiMaggio. She also spoke with him on the phone.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FUTHER AFFIANT SAITH NOT.


Steven Evett

Sworn to before me this 14th day of September 2022


Notary Public of South Carolina

My Commission expires: 01/20/2027

The Greenville News

PART OF THE USA TODAY NETWORK

Classified Ad Receipt (For Info Only - NOT A BILL)

Customer: FARNSWORTH LAW OFFICES LLC

Address: 414 PETTIGRU ST STE A
GREENVILLE SC 29601
USA

Ad No.: 0005465079

Pymt Method Invoice

Net Amount \$193.80

Run Times: 3

No. of Affidavits: 1

Run Dates: 10/27/22, 11/03/22, 11/10/22

Text of Ad:

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS
Ronald Carl Cox, III, Plaintiff

Michael John DiMaggio, Defendant
C.A. NO: 2022-CP-23-02830

ORDER FOR PUBLICATION
Having read the Petition for Publication, submitted by the Plaintiff, that this is a civil action, filed pursuant to S.C. Code 63-15-210, and it is appearing that the Defendant, Michael John DiMaggio, cannot be located by the Plaintiff after due diligence, (see attached Affidavits of Lauren Lipscombe and Steve Evert), it is ordered that the Defendant, Michael John DiMaggio, shall be served notice of this action by publication pursuant to South Carolina Code 15-9-710 (1978), as amended. The court finds, based on Plaintiff's Petition, The Greenville News, in Greenville, South Carolina is a newspaper of general circulation within Greenville, South Carolina most likely to give the Defendant, Michael John DiMaggio, notice of these proceedings.
IT THEREFORE ORDERED that service in this matter be made on the Defendant, Michael John DiMaggio, by publication of Summons and Notice in The Greenville News, a newspaper of general circulation within Greenville, South Carolina once a week for three (3) consecutive weeks and that service of the Summons by mail be waived.
AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

Affidavit of
Steven Evett

PERSONALLY APPEARED BEFORE ME STEVEN EVETT WHO FIRST BEING DULY
SWORN, TESTIFIES AS FOLLOWS:

I, Steven Evett, Litigation Manager for Daniel J. Farnsworth, Jr. have made many service attempts in regard to the service of a Summons and Complaint for Case No. #2022CP2302830. I have personally gone to three addresses provided by Jack Farnsworth, with Managed Recovery Solutions, INC in an attempt to serve Mr. DiMaggio. Mr. Jack Farnsworth used skip trace software to locate three different addresses for him; 1. 200 S. Academy St. Unit #2427 Greenville, SC 29601. 2. 11 Coolidge Ave. Greenville, SC 29607. 3. 201 Carolina Point Parkway, Apt #812 Greenville, SC 29607.

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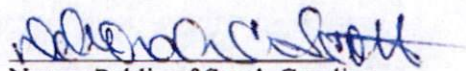
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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

FUTHER AFFIANT SAITH NOT.


Steven Evett

Sworn to before me this 14th day of September, 2022


Notary Public of South Carolina

My Commission expires: 01/20/2027

ASTATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

AFFIDAVIT OF
MICHAEL JOHN DIMAGGIO

PERSONALLY APPEARED before me, Michael John Dimaggio, who being duly sworn, deposes and states as follows:

My name is Michael John Dimaggio and I currently reside at 200 S. Academt Street, Apt. 2427, Greenville, South Carolina 29601. I am the same Michael Dimaggio that is named in the above captioned case.

I was contacted by telephone on or about September 1, 2023 by a man I now know to be Steve Evatt. In that conversation, Mr. Evatt represented that he was with the “victim’s fund” and that he had “legal papers” for me. I took this representation to mean the South Carolina Victim’s Compensation Fund.

I had previously received money from the SC Victim’s Compensation Fund as a result of being the victim of a crime charging Ronald Carl Cox III, the Plaintiff in this matter, and his brother, John Grant Cox, with assault and battery by mob.

The charges against these two brothers were eventually dismissed. As a condition of dismissal, they were obligated to reimburse the SC Victim’s Compensation Fund for the amount advanced to me for medical bills I incurred arising from being kicked in the face and rendered unconscious by John Grant Cox and thereafter stomped on me head with his boot heel. My memory of this is poor, but it was captured on a bystander’s mobile phone video.

In the course of these events, I was later charged with Public Disorderly Conduct. I obtained a lawyer, Austin McDaniel, for this purpose.

When Mr. Evatt advised that he was with the “victim’s fund” I was in my car onand taking my dog to the veterinarian. I referred him to Mr. McDaniel. At no time did Mr. Evatt advise that he had a Summons and Complaint in a civil suit against me that needed to be served upon me. At that time, I was unaware a civil suit had been filed against me. I did not refer him to Mr. McDaniel to accept service of a Summons and Complaint on my behalf because I was unaware there even was a Summons and Complaint filed against me.

I never spoke with Mr. Evatt again. I did receive a voicemail from him the following day that I have provided to my attorney. In that voicemail, Mr. Evatt notes that the matter does not have to do with a criminal case. He still did not provide an explanation as to what the papers pertained to. I still believed they had to do with the SC Victim’s Compensation Fund, but was confused as to what they might be.

This affidavit (sworn statement) was drafted for me by attorney, J. Kirkman Moorhead. I have had an opportunity to review it for accuracy and for content and I have changed and corrected things that I felt were not fully accurate or that were better said in a different manner. By signing it below, I acknowledge and swear that the statements are true and correct and for items where I state my belief, it provides a true and accurate description of my belief.

FURTHER AFFIANT SAYETH NOT.

Sworn to before me this ____ day
of _____, 2023.

Michael John Dimaggio

Notary Public for South Carolina

PETTUS

FARNSWORTH

REGINALD HOFFMAN PETTUS (1920-2000)
JOHN WRIGHT FARNSWORTH (1941-1997)
DANIEL JOSEPH FARNSWORTH (OF COUNSEL)

DANIEL J. FARNSWORTH, JR.*

*MEMBER OF SOUTH CAROLINA AND VIRGINIA BAR

ATTORNEYS AND
COUNSELORS AT LAW

211 PETTIGRU STREET
GREENVILLE, SOUTH CAROLINA
29601

201 KING STREET
KEYSVILLE, VIRGINIA
23947

July 27, 2023

Honorable G. D. Morgan, Jr.
305 East North Street
Greenville, South Carolina 29601

RE: Cox v. DiMaggio
Civil Action Number 2022-CP-23-02830

Dear Judge Morgan,

Thank you for hearing counsels' arguments on this matter on Monday of this week. While you are considering your ruling on Defendant's Motion to Dismiss, I wish to provide further documentation of what was mentioned in our arguments before Your Honor on Monday.

These documents were referenced, and most are contained in the Court's emails and Plaintiff's filing of its Motion for Service by Publication, which was granted by Judge Latisha Verdin before the expiration of the service period at issue in this action.

I am copying Attorney Kirk Morehead on this correspondence, so that he may respond with any comments.

First, I want to apologize again for my tardiness. My staff had this hearing calendared for 12.30pm, instead of 11:30am, and I even contacted them Monday morning asking them to confirm the hearing time, which they told me was correct. Again, on Tuesday of this week, I dealt with the same calendaring error (an hour behind the scheduled time) for a preliminary hearing on a General Sessions case. I have addressed this with my staff and terminated Ms. Lipscomb as a result.

In my twenty-nine years of practice, I have made every effort to pay attention to details and keep from wasting the Court's time. And I apologize for this error, for which I will double my efforts to ensure it will not happen again.

Regarding our attempts at service on the Defendant in this action, I was led to believe, that service of this Summons and Complaint was being handled by my staff (Mr. Evatt) who assured me, while I was dealing with serious cervical spine issues and surgery during the months leading up to September 2022, and a lengthy recovery thereafter, with which I am still not fully recovered, that he understood how serve this process correctly. I also asked my other assistant, Lauren Lipscomb, to assist Mr. Evatt, so I could help ensure service was done correctly.

You have Affidavits from both Evatt and Lipscomb, setting out much of their efforts, although Mr. Evatt provided me with more information than included in his Affidavit, which was presented during arguments before Your Honor on Monday afternoon.

After obtaining an Order of Service by Publication from Judge Verdin, and upon my becoming aware that this may have contained some errors, I had Publication done again. Soon thereafter, and due to my addressing these omissions and mistakes in a rather strenuous way with Mr. Steve Evatt, he left our firm.

I was pleased that Mr. Evatt agreed to appear at Monday's hearing to add facts concerning his phone calls with Defendant and his attempts to serve Plaintiff's Complaint, which were not included in his affidavit, although he was not allowed to testify.

As such I am presenting herewith, my own affidavit that lays out what Mr. Evatt told me and what I believed were the circumstances surrounding the attempts at service of the Defendant in this case.

Attached herewith is a copy of the email Mr. Evatt that I referenced, that was sent as instructed by Defendant Dimaggio, to his attorney, pursuant to their phone conversation on September 1, 2022. Although Attorney McDaniel's email response the next day indicated that he was not authorized to accept service, he in fact was authorized to do so, the day before by Defendant DiMaggio himself to Mr. Evatt.

I do believe that a specific instruction by a party to deliver a Summons and Complaint to someone else, including his counsel, when then delivered, should be considered satisfactory service.

I have also attached copies of the numerous attempts by my staff, which I described during arguments on Monday, making additional efforts to serve Defendant by publication, which I instructed them to do out of an abundance of caution, since we believed Defendant was attempting to avoid service of Plaintiff's Summons and Complaint.

Attached are twenty-five (25) emails and electronic filing notices illustrating my staff's repeated attempts to also serve Defendant by Publication, which was Ordered and published twice, for six consecutive weeks, double what the publication rules require.

Initial service by publication, although including a mistake in the document Published, was done in good faith and provided Defendant with sufficient notice of a pending Civil Action against the Defendant. Although, ordinarily only the case Summons is published, the Order of Publication was actually published in the newspaper – which actually gave Defendant more detailed notice of the filed action, along with reference to the attempts at service Plaintiff was making.

Further, once I became aware that the publication in the newspaper did not include the Summons, I instructed my staff to re-submit the Summons for publication in the newspaper, again having it run for three consecutive weeks. Although counsel for Defendant argued this was completed after the one hundred twenty (120) period for service, Plaintiffs numerous attempts at serving Defendant began well before the expiration of that time period. And I again submit that relief from such errors is available under our Rules and caselaw, specifically the caselaw cited by counsel for Defendant, himself.

As I argued on behalf of the Plaintiff on Monday's hearing, these mistakes were made in good faith, by inexperienced staff, while I was out dealing with a critically serious medical condition. And these mistakes were labored over and corrected, which I respectfully submit, illustrate excusable neglect and mistake, for which relief is provided in the Rules, specifically Rule 60(b)(1) of our Rules of Civil Procedure.

Also, as a solo practitioner, I do not enjoy the benefit of partners or other associate lawyers to assist me, and unfortunately my staff was newly hired and as to Mr. Evatt, vastly exaggerated his prior law firm experience when hired soon before these events transpired.

As noted above, the case law cited by Defendant's counsel actually supports the relief Plaintiff seeks here. Pelzer v. State, (662 SE2d 618), although a Statute of Limitations case, sets out that exceptions are to be made for time limits when circumstances of individualized hardship are shown, which I believe are clearly present here, Your Honor.

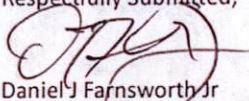
I further believe that Defendant Dimaggio is not being truthful with his attorney, in expressing, at least through argument at Monday's hearing, his claim that he had no knowledge of the pleadings and our attempts to serve the same, including his instructions to my staff for delivery to his former attorney. Such suspicions were based on his hanging up on Mr. Evatt during what is my understanding was a second phone call to Defendant Dimaggio, along with his refusing to come to the door of his residence when my staff clearly heard someone inside of the home. I do not believe the law and Court rules would be designed to protect a Defendant in his efforts to avoid service of process and the authority of the Court.

July 27, 2023 – Cox v. DiMaggio
Page Four

As our Rules are meant to allow parties to adjudicate their disputes on their merits, so that the public may have confidence in our system of justice, I would submit that it is unjust to dismiss Plaintiff's action when actual contact was made with the Defendant concerning service, numerous additional good faith attempts were made, including publication of information clearly referencing what Defendant is believed to have likely received from his former counsel, all happening during my serious personal medical hardship occurring at that time, which prohibited me from being able to clearly and more effectively address their efforts.

I thank you for your close consideration of this matter and ask that you please allow the relief that I believe the Rules and case law provide, requiring the Defendant to answer Plaintiff's Complaint and allow the parties to resolve this dispute on its merits.

Respectfully Submitted,



Daniel J Farnsworth Jr
Counsel for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III,

Plaintiff,

v.

Michael John Dimaggio,

Defendant.

IN THE COURT OF COMMON PLEAS

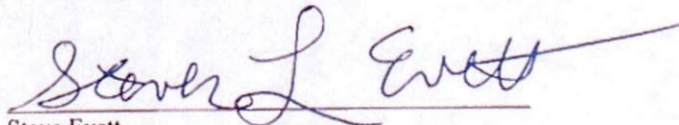
C.A. No.: 2022-CP-23-01612

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Summons was served upon C. Austin McDaniel, Attorney for Defendant, in the above-entitled action this 31st day of August 2022, via electronic mail:

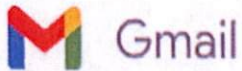
Austin McDaniel Law
523 N. Main Street
Anderson, SC 29621
austin@austinmcdaniellaw.com

Farnsworth Law Offices
211 Pettigru Street
Greenville, SC 29601



Steve Evett
Litigation Manager for Dan J. Farnsworth

September 1, 2022



Steve Evett <steve@farnsworthlawoffices.com>

Michael Dimaggio

2 messages

Steve Evett <steve@farnsworthlawoffices.com>
To: austin@austinmcdaniellaw.com
Cc: Dan Farnsworth <dan@farnsworthlawoffices.com>

Thu, Sep 1, 2022 at 1:03 PM

Please see the attached Summons for your client with Certificate of Service.

Sincerely,

Steve Evett
Litigation Manager
Farnsworth Law Offices
(864) 250-9119
steve@farnsworthlawoffices.com

 **Michael Dimaggio - Summons with COS.pdf**
221K

Austin McDaniel <austin@austinmcdaniellaw.com>
To: Steve Evett <steve@farnsworthlawoffices.com>
Cc: Dan Farnsworth <dan@farnsworthlawoffices.com>

Fri, Sep 2, 2022 at 10:59 AM

Sorry I was out of the office yesterday. I do not represent Mr. Dimaggio on the attached civil action and therefore not authorized to accept service on his behalf.

sincerely,

C. Austin McDaniel
Attorney at Law
523 North Main Street
Anderson SC 29621
864-540-8135 (P)
864-540-8137 (F)
www.austinmcdaniellaw.com

<Michael Dimaggio - Summons with COS.pdf>

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III

Plaintiff(s)

vs.

Michael John Dimaggio

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

____-CP-____-

Submitted By: Daniel J. Farnsworth, Jr.

Address: 211 Pettigru Street, Greenville, South Carolina 29601

SC Bar #: 6922

Telephone #: 864.250.9119

Fax #: 864.250.9120

Other: _____

E-mail: Dan@FarnsworthLawOffices.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Conversion (310) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Motor Vehicle Accident (320) | ☐ Condemnation (410) |
| ☐ General (130) | ☐ Medical Malpractice (220) | ☐ Premises Liability (330) | ☐ Foreclosure (420) |
| ☐ Breach of Contract (140) | Previous Notice of Intent Case # | ☐ Products Liability (340) | ☐ Mechanic's Lien (430) |
| ☐ Fraud/Bad Faith (150) | 20 ____ -NI- ____ - | ☐ Personal Injury (350) | ☐ Partition (440) |
| ☐ Failure to Deliver/
Warranty (160) | ☐ Notice/ File Med Mal (230) | ☐ Wrongful Death (360) | ☐ Possession (450) |
| ☐ Employment Discrim
(170) | ☐ Other (299) _____ | ☒ Assault/Battery (370) | ☐ Building Code Violation (460) |
| ☐ Employment (180) | | ☐ Slander Libel (380) | ☐ Other (499) _____ |
| ☐ Other (199) _____ | | ☐ Other (399) _____ | |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Reinstatement Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) _____ | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) _____ | ☐ Transfer of Structured
Settlement Payment Rights
Application (760) | ☐ Worker's Comp (960) |
| | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| Special/Complex /Other | | ☐ Petition for Workers
Compensation Settlement
Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Incapacitated Adult
Settlement (790) | ☐ Employment Security Comm
(991) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) _____ | ☐ Other (999) _____ |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) _____ | ☐ Motion to Quash Subpoena in an
Out-of-County Action (660) | | |
| ☐ Sexual Predator (510) | ☐ Pre-Suit Discovery (670) | | |
| ☐ Permanent Restraining Order (680) | | | |
| ☐ Interpleader (690) | | | |

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR under ADR Rule 3(b) upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. Cases may also be exempt from ADR under ADR Rule 3(c) upon motion to and approval by the court.
6. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
7. Application of a party to be exempt from payment of neutral fees due to indigency should be filed with the Clerk of Court prior to the scheduling of the ADR conference.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

RONALD CARL COX, III,)
Plaintiff,) SUMMONS
vs.)
MICHAEL JOHN DIMAGGIO,)
Defendant.)
_____)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office, 211 Pettigru Street, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Daniel J. Farnsworth, Jr.

Daniel J. Farnsworth, Jr.
PETTUS / FARNSWORTH, LLC
211 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 250-9119
Facsimile: (864) 250-9120
Email: Dan@Farnsworthlawoffices.com
Attorneys for the Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

RONALD CARL COX, III,)

Plaintiff,)

vs.)

MICHAEL JOHN DIMAGGIO,)

Defendant.)

COMPLAINT

(ASSAULT AND BATTERY,
NEGLIGENCE, and
GROSS NEGLIGENCE)

(JURY TRIAL DEMANDED)

TO THE DEFENDANT ABOVE NAMED:

COMES NOW the Plaintiff, who respectfully alleges and would show unto this Court as follows:

1. Upon information and belief, the Defendant, Michael John Dimaggio, (hereinafter "Dimaggio") is a citizen and resident of the State of South Carolina, County of Greenville.
2. The Plaintiff, Ronald Carl Cox, III, (hereinafter "Trey") is a citizen and resident of the State of South Carolina, County of Greenville.
4. On the evening of June 1, 2019, Plaintiff was in downtown Greenville leaving a local restaurant with his date, when he noticed a man (later identified as Defendant Dimaggio) staggering around, appearing to be highly intoxicated.
5. As Trey and his date walked by Defendant, the clearly intoxicated Dimaggio began shouting vulgarities and obscenities at Trey and his date, including sexually suggestive and insulting words directed towards his lady friend.

6. Trey calmly and appropriately ignored Dimaggio's offensive comments and walked along, attempting to avoid continued harassment of he and his date by this drunken stranger.

7. However, the grossly intoxicated Dimaggio followed the couple down the sidewalk and continued shouting obscenities at them, suggesting sexual acts that he would do to his girlfriend.

8. As Dimaggio followed the couple several more blocks, both Trey and his girlfriend asked the drunken Dimaggio to just leave them alone, however Defendant Dimaggio would not stop.

9. As Dimaggio kept following and approaching the couple closer, Trey again asked Dimaggio to stop harassing them, when without warning Defendant Dimaggio suddenly drew back and struck Trey in his face with a closed fist.

10. The unprovoked assault tore open Trey's face above his left eye, causing a laceration that began to bleed down Trey's face and his clothes.

11. Trey and his girlfriend again walked away, trying desperately to get away from this drunken, belligerent harassment.

12. After stopping to tend to his bleeding headwound, Trey notice that Defendant Dimaggio was again approaching them.

13. Dimaggio then grabbed Trey around his neck and pulled him down into a choke hold and dragged Trey to the pavement by the throat.

12. As Plaintiff Trey Cox began to go limp and motionless from the dangerous choke hold Dimaggio had gripped him with, Trey's brother and his friends walked up, unfamiliar with what had been happening.

13. Trey's brother, Grant, quickly realized that his brother was in danger and noticed the blood covering his face and clothing, and subdued Defendant Dimaggio, finally allowing his brother to take a breath and escape from the strangling grip around his throat.

14. Plaintiff Trey Cox suffered serious and painful injuries, and permanent scarring, along with ongoing mental anguish, trauma and anxiety from Defendant Dimaggio's drunken, belligerent, and brutal unprovoked attack.

15. Further, once the Police arrived, they arrested Trey and his brother, Grant, seemingly unaware of who and what had started the incident or that Defendant Dimaggio had been the initial and primary aggressor.

16. After months and months of extraordinary anguish and distress, and incurring tens of thousands of dollars in legal fees, the criminal charges were dismissed against Trey, still leaving him insulted, hurt, indebted and dishonored.

FOR A FIRST CAUSE OF ACTION

Assault and Battery

17. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

18. Defendant Dimaggio had a duty to refrain from violent, unprovoked behavior towards another, and to conduct himself in a peaceful, orderly manner while in public, so as not to disturb the quiet enjoyment of those enjoying Downtown Greenville.

19. Defendant Dimaggio was willful, wanton and reckless as he drunkenly harassed the Plaintiff, and then violently assaulted and physically attacked Trey, being the direct and proximate cause of the physical, mental and pecuniary injuries, harms and losses suffered by Plaintiff

20. Plaintiff Trey Cox suffered tremendous damages at the hands of Defendant Dimaggio, including but not limited to, those harms and losses from:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- b. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- c. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- d. being greatly embarrassed and humiliated, and continuing to be so due to these events;
- d. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- e. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

All of which were the direct and proximate results of the Defendant Dimaggio's wrongful, reckless and drunken conduct as herein alleged.

FOR A SECOND CAUSE OF ACTION

Negligence and Gross Negligence

21. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

22. Defendant Dimaggio had a duty to refrain from appearing in public in a grossly intoxicated state, and behaving in a way that disturbed, insulted, shocked and offended others.

23. Defendant breached his duty by shouting profane, vulgar and lascivious words to various passers by on the evening of June 1, 2019, in downtown Greenville, including Plaintiff Trey Cox and his girlfriend, both of whom he followed, taunted and ultimately assaulted.

24. As a direct and proximate cause of Defendant Dimaggio's gross intoxication, negligence and gross negligence, Plaintiff suffered grave injuries and extraordinary trauma, including:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- d. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- e. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- f. being greatly embarrassed and humiliated, and continuing to be so due to these events;

- g. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- h. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

WHEREFORE, having fully set forth his Complaint herein, the Plaintiff prays that the Court inquire into the matters herein alleged, and render judgment in an amount of actual damages to be determined by a jury, and for such additional exemplary and punitive damages as may be awarded by the trier of fact, for the costs of this action, and for such additional and further relief as may be deemed appropriate by the Court.

Daniel J. Farnsworth, Jr.

Daniel J. Farnsworth, Jr.
PETTUS / FARNSWORTH, LLC
211 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 250-9119
Facsimile: (864) 250-9120
Email: Dan@Farnsworthlawoffices.com
Attorney for Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Ronald Carl Cox,	)	
	)	C/A NO: 2022-CP-23-02830
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF
	)	DANIEL J. FARNSWORTH JR.
Michael John Dimaggio,	)	
	)	
Defendant.	)	
	)	

PERSONALLY appeared before me the undersigned attorney, who first being duly sworn, deposes and says:

That I, Daniel J. Farnsworth, Jr., instructed my law office staff to serve the filed Summons and Complaint in the above action on Defendant in August of 2022. Thereafter, my staff informed me that they had obtained Defendant's phone number and two addresses from a skip-trace resource. On September 1, 2022, Counsel was told by staff member, Mr. Evatt, that he called Defendant Dimaggio and explained the Summons and Complaint we had for delivery to him, and I was further informed Defendant Dimaggio told Mr. Evatt to send it to his lawyer, giving the name of Attorney Austin McDaniel of Anderson, South Carolina. Mr. Evatt told me that he called Defendant Dimaggio a second time and Defendant Dimaggio ended that call, hanging up on Mr. Evatt.

Counsel was then informed by his staff members, on September 2, 2022, that we had received an email from Attorney McDaniel stating that he was not authorized to accept service on behalf of Defendant Dimaggio. Although, I believed service to have been proper, since Defendant Dimaggio explicitly instructed Mr. Evatt to send process to Attorney McDaniel, out of an abundance of caution, I asked Mr. Evatt and Ms. Lipscomb to travel to Defendant

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III,

Plaintiff,

v.

Michael John Dimaggio,

Defendant.

IN THE COURT OF COMMON PLEAS

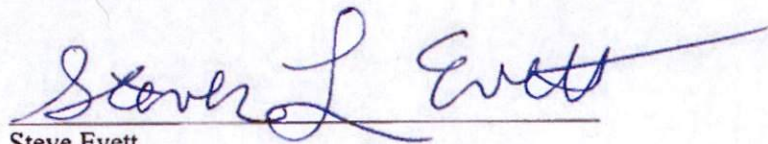
C.A. No.: 2022-CP-23-01612

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Summons was served upon C. Austin McDaniel, Attorney for Defendant, in the above-entitled action this 31st day of August 2022, via electronic mail:

Austin McDaniel Law
523 N. Main Street
Anderson, SC 29621
austin@austinmcdaniellaw.com

**Farnsworth Law Offices
211 Pettigru Street
Greenville, SC 29601**



Steve Evett
Litigation Manager for Dan J. Farnsworth

September 1, 2022

Dimaggio's residence and again attempt personal service. I was then told that on or about September 8, 2022, that Mr. Evatt and Ms. Lipscomb attempted personal service of the Summons and Complaint on Defendant Dimaggio at his residence. I was informed that Dimaggio did not come to his door, although my staff heard keys jingling and a dog barking inside. It is my understanding that Mr. Evatt and Ms. Lipscomb then spoke with neighbors, who confirmed Defendant Dimaggio resided there, that he walked his dog most mornings and had groceries delivered there.

Due to Defendant Dimaggio speaking on the phone with my staff, then again hanging up on a call after being told what legal papers we had for him, and his refusal to answer their knock at his door, when there was obvious signs of someone home at the time, I concluded that Defendant Dimaggio was attempting to evade service in this matter.

I then instructed Mr. Evatt and Ms. Lipscomb to change gears and seek an Order from the Court allowing service by Publication. As I was suffering from a serious cervical spine issue, both months before a fusion surgery done on September 13, 2022, and a tremendously difficult recovery for months after, I placed trust in my staff to carry out my instructions and have service completed.

I was later informed that an Order for Service by Publication was granted, and that such notice was being published in the local newspaper for the three consecutive weeks as required by the rules. Thereafter, I came to realize that the notice published was not the typical Summons that is usually included in the newspaper. I then asked Mr. Evatt and Ms. Lipscomb to re-submit the Summons and re-publish the notice for an additional three consecutive weeks, again out of an abundance of caution to make sure Defendant Dimaggio could not claim he was not properly served under our Court Rules. Although the publications appeared after the time set out for

service of our Summons and Complaint, my staff's efforts had begun well before that time, and a timely Motion for Service by Publication was submitted to the Court.

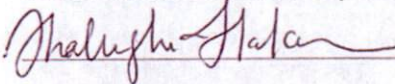
It is my belief that Defendant Dimaggio sought to avoid service, from the first phone call by Mr. Evatt explaining the Summons and Complaint that we had for delivery to him. It was my understanding at the time that Defendant Dimaggio hung up on my staff during a second call to him, then refused to answer the door when my staff appeared to personally serve him at his residence, and then hired counsel to attempt to avoid service by publication, which although not perfect, publicly notified defendant of what he had been made aware of my direct phone contact, travel to his residence and sent to his former attorney, who certainly shared this Summons and Complaint with Defendant Dimaggio.

It is my solemn belief that my staff's attempts to secure service were made in good faith, although admittedly with several errors and mistakes, and that Defendant Dimaggio in fact did receive notice of the proceedings filed against him. I also firmly believe that a Defendant in a meritorious civil claim should not be allowed to avoid service and escape an adjudication of a dispute on its merits, particularly when our Rules and caselaw provide for relief from such errors in unique circumstances such as these.

FURTHER AFFIANT SAITH NOT.


Daniel J. Farnsworth, Jr.

Sworn to before me this 27th day of July, 2023



Notary Public for the State of South Carolina

My Commission Expires on 06/29/2031

**Voicemail attachment from Steven Evett left on
Respondent DiMaggio's cell phone sent by
counsel for Respondent to Judge Morgan on
August 2, 2023.
(Item being submitted by thumb drive by Legal
Eagle.)**

RECEIVED

Sep 20 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Case No. 2022-CP-23-2830

Ronald Carl Cox, III, Appellant,
v.
Michael John Dimaggio..... Respondent.

NOTICE OF APPEAL

Ronald Carl Cox, III, appeals the order of dismissal of the Honorable G.D. Morgan, Jr., dated August 21, 2023. Appellant received written notice of entry of this order on September 19, 2023.

September 20, 2023

s/Daniel J Farnsworth Jr
Daniel J Farnsworth Jr
211 Pettigru Street
Greenville, South Carolina 29601
(864)250-9119
Attorney for Appellant

Other Counsel of Record:

John Moorhead
2203 North Main St
Anderson, South Carolina 29621
Attorney for Respondent
(864) 864-225-9155

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Ronald Carl Cox, III,)
)
Plaintiff,)
-vs-)
)
Michael John Dimaggio)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2022-CP-23-2830

RECEIVED

Sep 20 2023

SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal in the above-captioned matter was served upon Counsel for the Defendant and The Honorable Judge Morgan via AIS electronic mail, addressed as follows:

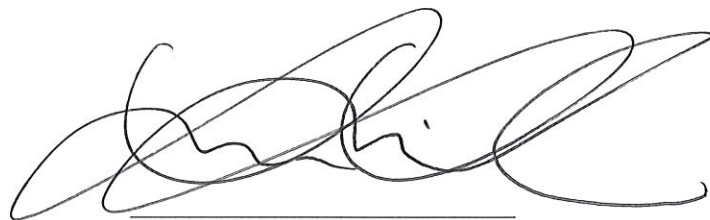
VIA AIS

John Moorehead
kirk@mllawyers.com

VIA AIS

The Honorable Judge Morgan
gmorganj@sccourts.org
gmorganlc@sccourts.org

September 20, 2023
Greenville, South Carolina



Lauren O. Lipscomb
Paralegal to Daniel J. Farnsworth, Jr.

RECEIVED

Sep 20 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

CASE NO. 2022-CP-23-2830

Ronald Carl Cox, III,)

Plaintiff,)

-vs-)

Michael John Dimaggio)

Defendant.)

CERTIFICATE OF SERVICE

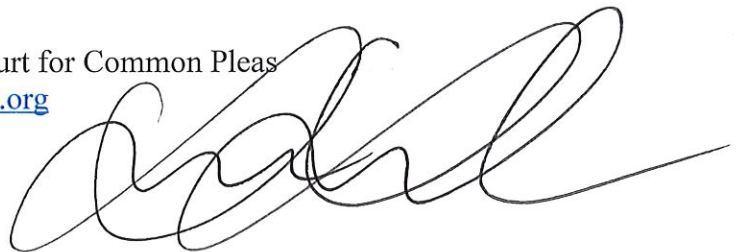
I hereby certify that the foregoing Notice of Appeal in the above-captioned matter was served upon The Clerk of Court for the South Carolina Court of Appeals and Greenville County Clerk of Common Pleas via AIS electronic mail, addressed as follows:

VIA AIS

Clerk of Court for the South Carolina Court of Appeals
ctappfilings@sccourts.org

VIA AIS

Greenville County Clerk of Court for Common Pleas
clerkofcourt@greenvillecounty.org



September 20, 2023
Greenville, South Carolina

Lauren O. Lipscomb
Paralegal to Daniel J. Farnsworth, Jr.

RECEIVED

PROOF OF SERVICE OF A NOTICE OF APPEAL

SEP 29 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. D. Morgan, Thirteenth Circuit Court Judge

Case No. 2023-001497

Ronald Carl Cox, III,

Appellant,

v.

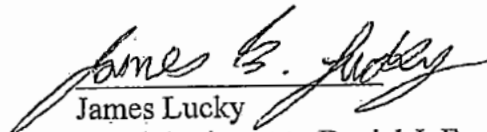
Michael John Dimaggio,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Michael John Dimaggio, by personally delivering a copy of it to his attorney of record, John Kirkman Moorhead, at his office at 2203 North Main Street, Anderson, South Carolina 29621 on September 21, 2023.

September 21, 2023



James Lucky
Legal Assistant to Daniel J. Farnsworth, Jr. #6922
PETTUS / FARNSWORTH, LLC
211 Pettigru Street
Greenville, South Carolina 29601
Phone (864) 250-9119
Fax (864) 250-9119

PETTUS

FARNSWORTH

Reginald Hoffman Pettus (1920-2010)
John Wright Farnsworth (1941-1997)
Daniel Joseph Farnsworth (Of Counsel)

Daniel J. Farnsworth, Jr.*

*Member of the South Carolina and Virginia Bar

Attorneys and
Counselors at Law

211 Pettigru Street
Greenville, South Carolina 29601

201 King Street
Keysville, Virginia 23947

September 26, 2023

RECEIVED

SEP 29 2023

SC Court of Appeals

Via E-Mail and United States Postal Service
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Ronald Carl Cox, III v. Michael John Dimaggio
Appellate Case No.: 2023-001497

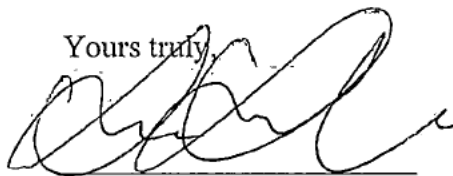
Dear Clerk of Court,

Please find enclosed **Proof of Service of a Notice of Appeal** for the above-referenced case. A copy of the enclosed Proof of Service is also being sent via United States Postal Service.

Thank you for your attention to this matter. Please do not hesitate to contact our office should you have any questions.

With kind regards, I remain

Yours truly,



Lauren O. Lipscomb
Senior Paralegal to
Daniel J. Farnsworth, Jr. #6922
PETTUS / FARNSWORTH, LLC
Greenville, South Carolina 29601
Phone (864) 250-9119
Fax (864) 250-9120

/lol

Cc: John Kirkman Moorhead

www.FarnsworthLawOffices.com

South Carolina Office 864.250.9119

Virginia Office 434.736.8171

PETTUS/FARNSWORTH, LLC.
Attorneys and Counselors at Law
211 Pettigru Street
Greenville, South Carolina 29601

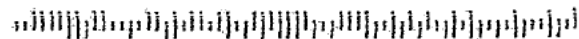
GREENVILLE SC 296

27 SEP 2023 PM 4 L

RECEIVED

SEP 29 2023

SC Court of Appeals
The South Carolina Court of Appeals
Post office Box 11629
Columbia, South Carolina 29211





Dan Farnsworth <dan@farnsworthlawoffices.com>

Fwd: Cox v DiMaggio - Monday's Motion Hearing

Bootney Lee <d_farns@icloud.com>

Thu, Jul 27, 2023 at 1:11 PM

To: Bootney Lee <dan@farnsworthlawoffices.com>

_df

Begin forwarded message:

From: Bootney Lee <d_farns@icloud.com>

Date: July 27, 2023 at 1:10:33 PM EDT

To: gmorgansc@sccourts.org, kirk@mllawyers.com

Subject: Cox v DiMaggio - Monday's Motion Hearing

Please see attached Correspondence of todays date (bottom of attachments), Affidavit of Daniel Farnsworth, and other exhibits referenced during Mondays motion hearing

Thank you.

-Dan Farnsworth, Jr.

_df

4 attachments — [Download all attachments](#)



STATE OF SOUTH CAROLINA.pdf

630K [View as HTML](#) [Download](#)



Michael Dimaggio - Summons with COS.pdf

221K [View as HTML](#) [Download](#)



MEMBER OF SOUTH CAROLINA AND VIRGINIA BAR.pdf

1394K [View as HTML](#) [Download](#)



STATE OF SOUTH CAROLINA.pdf

1189K [View as HTML](#) [Download](#)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III,

Plaintiff,

v.

Michael John Dimaggio,

Defendant.

IN THE COURT OF COMMON PLEAS

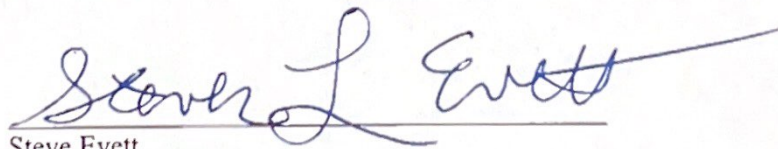
C.A. No.: 2022-CP-23-01612

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Summons was served upon C. Austin McDaniel, Attorney for Defendant, in the above-entitled action this 31st day of August 2022, via electronic mail:

Austin McDaniel Law
523 N. Main Street
Anderson, SC 29621
austin@austinmcdaniellaw.com

Farnsworth Law Offices
211 Pettigru Street
Greenville, SC 29601



Steve Evett
Litigation Manager for Dan J. Farnsworth

September 1, 2022



Steve Evett <steve@farnsworthlawoffices.com>

Michael Dimaggio

2 messages

Steve Evett <steve@farnsworthlawoffices.com>

Thu, Sep 1, 2022 at 1:03 PM

To: austin@austinmcdaniellaw.com

Cc: Dan Farnsworth <dan@farnsworthlawoffices.com>

Please see the attached Summons for your client with Certificate of Service.

Sincerely,

Steve Evett
Litigation Manager
Farnsworth Law Offices
(864) 250-9119
steve@farnsworthlawoffices.com



Michael Dimaggio - Summons with COS.pdf
221K

Austin McDaniel <austin@austinmcdaniellaw.com>

Fri, Sep 2, 2022 at 10:59 AM

To: Steve Evett <steve@farnsworthlawoffices.com>

Cc: Dan Farnsworth <dan@farnsworthlawoffices.com>

Sorry I was out of the office yesterday. I do not represent Mr. Dimaggio on the attached civil action and therefore not authorized to accept service on his behalf.

sincerely,

C.Austin McDaniel
Attorney at Law
523 North Main Street
Anderson SC 29621
864-540-8135 (P)
864-540-8137(F)
www.austinmcdaniellaw.com

[Quoted text hidden]

[Quoted text hidden]

<Michael Dimaggio - Summons with COS.pdf>

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III

Plaintiff(s)

vs.

Michael John Dimaggio

Defendant(s)

Submitted By: Daniel J. Farnsworth, Jr.

Address: 211 Pettigru Street, Greenville, South Carolina 29601

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

____-CP - ____ - ____

SC Bar #: 6922

Telephone #: 864.250.9119

Fax #: 864.250.9120

Other: _____

E-mail: Dan@FarnsworthLawOffices.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

** If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)

☐ Employment Discrim
(170)
☐ Employment (180)
☐ Other (199) _____
Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____-NI-____-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____

Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Unfair Trade Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ Other (899) _____ | Torts – Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____

Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)

☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Incapacitated Adult
Settlement (790)
☐ Other (799) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____

Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm
(991)

☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)

☐ Medical (620)

☐ Other (699) _____

☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)

☐ Out-of State Depositions (650)

☐ Motion to Quash Subpoena in an
Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a “Proof of ADR” form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the “Notice of Intent to File Suit” or as the court directs.
4. Cases are exempt from ADR under ADR Rule 3(b) upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. Cases may also be exempt from ADR under ADR Rule 3(c) upon motion to and approval by the court.
6. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
7. Application of a party to be exempt from payment of neutral fees due to indigency should be filed with the Clerk of Court prior to the scheduling of the ADR conference.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)

RONALD CARL COX, III,)
)
 Plaintiff,) SUMMONS
)
 vs.)
)
 MICHAEL JOHN DIMAGGIO,)
)
 Defendant.)
)
)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscriber at his office, 211 Pettigru Street, Greenville, SC 29601, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Daniel J. Farnsworth, Jr.

Daniel J. Farnsworth, Jr.
 PETTUS / FARNSWORTH, LLC
 211 Pettigru Street
 Greenville, South Carolina 29601
 Telephone: (864) 250-9119
 Facsimile: (864) 250-9120
 Email: Dan@Farnsworthlawoffices.com
Attorneys for the Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) FOR THE THIRTEENTH JUDICIAL CIRCUIT

RONALD CARL COX, III,)

Plaintiff,)

vs.)

MICHAEL JOHN DIMAGGIO,)

Defendant.)

COMPLAINT

(ASSAULT AND BATTERY,
NEGLIGENCE, and
GROSS NEGLIGENCE)

(JURY TRIAL DEMANDED)

TO THE DEFENDANT ABOVE NAMED:

COMES NOW the Plaintiff, who respectfully alleges and would show unto this Court as follows:

1. Upon information and belief, the Defendant, Michael John Dimaggio, (hereinafter "Dimaggio") is a citizen and resident of the State of South Carolina, County of Greenville.
2. The Plaintiff, Ronald Carl Cox, III, (hereinafter "Trey") is a citizen and resident of the State of South Carolina, County of Greenville.
4. On the evening of June 1, 2019, Plaintiff was in downtown Greenville leaving a local restaurant with his date, when he noticed a man (later identified as Defendant Dimaggio) staggering around, appearing to be highly intoxicated.
5. As Trey and his date walked by Defendant, the clearly intoxicated Dimaggio began shouting vulgarities and obscenities at Trey and his date, including sexually suggestive and insulting words directed towards his lady friend.

6. Trey calmly and appropriately ignored Dimaggio's offensive comments and walked along, attempting to avoid continued harassment of he and his date by this drunken stranger.

7. However, the grossly intoxicated Dimaggio followed the couple down the sidewalk and continued shouting obscenities at them, suggesting sexual acts that he would do to his girlfriend.

8. As Dimaggio followed the couple several more blocks, both Trey and his girlfriend asked the drunken Dimaggio to just leave them alone, however Defendant Dimaggio would not stop.

9. As Dimaggio kept following and approaching the couple closer, Trey again asked Dimaggio to stop harassing them, when without warning Defendant Dimaggio suddenly drew back and struck Trey in his face with a closed fist.

10. The unprovoked assault tore open Trey's face above his left eye, causing a laceration that began to bleed down Trey's face and his clothes.

11. Trey and his girlfriend again walked away, trying desperately to get away from this drunken, belligerent harassment.

12. After stopping to tend to his bleeding headwound, Trey notice that Defendant Dimaggio was again approaching them.

13. Dimaggio then grabbed Trey around his neck and pulled him down into a choke hold and dragged Trey to the pavement by the throat.

12. As Plaintiff Trey Cox began to go limp and motionless from the dangerous choke hold Dimaggio had gripped him with, Trey's brother and his friends walked up, unfamiliar with what had been happening.

13. Trey's brother, Grant, quickly realized that his brother was in danger and noticed the blood covering his face and clothing, and subdued Defendant Dimaggio, finally allowing his brother to take a breath and escape from the strangling grip around his throat.

14. Plaintiff Trey Cox suffered serious and painful injuries, and permanent scarring, along with ongoing mental anguish, trauma and anxiety from Defendant Dimaggio's drunken, belligerent, and brutal unprovoked attack.

15. Further, once the Police arrived, they arrested Trey and his brother, Grant, seemingly unaware of who and what had started the incident or that Defendant Dimaggio had been the initial and primary aggressor.

16. After months and months of extraordinary anguish and distress, and incurring tens of thousands of dollars in legal fees, the criminal charges were dismissed against Trey, still leaving him insulted, hurt, indebted and dishonored.

FOR A FIRST CAUSE OF ACTION

Assault and Battery

17. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

18. Defendant Dimaggio had a duty to refrain from violent, unprovoked behavior towards another, and to conduct himself in a peaceful, orderly manner while in public, so as not to disturb the quiet enjoyment of those enjoying Downtown Greenville.

19. Defendant Dimaggio was willful, wanton and reckless as he drunkenly harassed the Plaintiff, and then violently assaulted and physically attacked Trey, being the direct and proximate cause of the physical, mental and pecuniary injuries, harms and losses suffered by Plaintiff

20. Plaintiff Trey Cox suffered tremendous damages at the hands of Defendant Dimaggio, including but not limited to, those harms and losses from:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- b. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- c. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- d. being greatly embarrassed and humiliated, and continuing to be so due to these events;
- d. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- e. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

All of which were the direct and proximate results of the Defendant Dimaggio's wrongful, reckless and drunken conduct as herein alleged.

FOR A SECOND CAUSE OF ACTION

Negligence and Gross Negligence

21. The allegations of Paragraphs One through Sixteen, above, are reiterated as fully as if repeated verbatim herein.

22. Defendant Dimaggio had a duty to refrain from appearing in public in a grossly intoxicated state, and behaving in a way that disturbed, insulted, shocked and offended others.

23. Defendant breached his duty by shouting profane, vulgar and lascivious words to various passers by on the evening of June 1, 2019, in downtown Greenville, including Plaintiff Trey Cox and his girlfriend, both of whom he followed, taunted and ultimately assaulted.

24. As a direct and proximate cause of Defendant Dimaggio's gross intoxication, negligence and gross negligence, Plaintiff suffered grave injuries and extraordinary trauma, including:

- a. being seriously injured about his face, leaving permanent disfigurement;
- b. being detained, jailed and deprived of his freedom, when he was an innocent victim of an unprovoked, violent assault;
- c. suffering great emotional distress and mental anguish;
- d. suffering the burden of criminal prosecution and potential incarceration for a crime when he was the actual victim;
- e. subjected to the unfounded scorn and ridicule of those who witnessed his arrest and who became aware of his arrest, assuming he was guilty;
- f. being greatly embarrassed and humiliated, and continuing to be so due to these events;

- g. has suffered continually due to being the subject of exaggerated and false claims against him regarding this incident;
- h. has suffered financial losses as a result of this violent assault, including both medical care for his injuries; and having to expend monies to engage the services of an attorney to defend him against false criminal charges arising from this attack.

WHEREFORE, having fully set forth his Complaint herein, the Plaintiff prays that the Court inquire into the matters herein alleged, and render judgment in an amount of actual damages to be determined by a jury, and for such additional exemplary and punitive damages as may be awarded by the trier of fact, for the costs of this action, and for such additional and further relief as may be deemed appropriate by the Court.

Daniel J. Farnsworth, Jr.

Daniel J. Farnsworth, Jr.
PETTUS / FARNSWORTH, LLC
211 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 250-9119
Facsimile: (864) 250-9120
Email: Dan@Farnsworthlawoffices.com
Attorney for Plaintiff

May 31, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Ronald Carl Cox, III,

Plaintiff,

v.

Michael John Dimaggio,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2022-CP-23-01612

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Summons was served upon C. Austin McDaniel, Attorney for Defendant, in the above-entitled action this 31st day of August 2022, via electronic mail:

Austin McDaniel Law
523 N. Main Street
Anderson, SC 29621
austin@austinmcdaniellaw.com

**Farnsworth Law Offices
211 Pettigru Street
Greenville, SC 29601**



Steve Evett
Litigation Manager for Dan J. Farnsworth

September 1, 2022

PETTUS

FARNSWORTH

ATTORNEYS AND
COUNSELORS AT LAW

REGINALD HOFFMAN PETTUS (1920-2000)
JOHN WRIGHT FARNSWORTH (1941-1997)
DANIEL JOSEPH FARNSWORTH (OF COUNSEL)

211 PETTIGRU STREET
GREENVILLE, SOUTH CAROLINA
29601

DANIEL J. FARNSWORTH, JR.*

201 KING STREET
KEYSVILLE, VIRGINIA
23947

*MEMBER OF SOUTH CAROLINA AND VIRGINIA BAR

July 27, 2023

Honorable G. D. Morgan, Jr.
305 East North Street
Greenville, South Carolina 29601

RE: Cox v. DiMaggio
Civil Action Number 2022-CP-23-02830

Dear Judge Morgan,

Thank you for hearing counsels' arguments on this matter on Monday of this week. While you are considering your ruling on Defendant's Motion to Dismiss, I wish to provide further documentation of what was mentioned in our arguments before Your Honor on Monday.

These documents were referenced, and most are contained in the Court's emails and Plaintiff's filing of its Motion for Service by Publication, which was granted by Judge Latisha Verdin before the expiration of the service period at issue in this action.

I am copying Attorney Kirk Morehead on this correspondence, so that he may respond with any comments.

First, I want to apologize again for my tardiness. My staff had this hearing calendared for 12.30pm, instead of 11:30am, and I even contacted them Monday morning asking them to confirm the hearing time, which they told me was correct. Again, on Tuesday of this week, I dealt with the same calendaring error (an hour behind the scheduled time) for a preliminary hearing on a General Sessions case. I have addressed this with my staff and terminated Ms. Lipscomb as a result.

In my twenty-nine years of practice, I have made every effort to pay attention to details and keep from wasting the Court's time. And I apologize for this error, for which I will double my efforts to ensure it will not happen again.

Regarding our attempts at service on the Defendant in this action, I was led to believe, that service of this Summons and Complaint was being handled by my staff (Mr. Evatt) who assured me, while I was dealing with serious cervical spine issues and surgery during the months leading up to September 2022, and a lengthy recovery thereafter, with which I am still not fully recovered, that he understood how serve this process correctly. I also asked my other assistant, Lauren Lipscomb, to assist Mr. Evatt, so I could help ensure service was done correctly.

You have Affidavits from both Evatt and Lipscomb, setting out much of their efforts, although Mr. Evatt provided me with more information than included in his Affidavit, which was presented during arguments before Your Honor on Monday afternoon.

After obtaining an Order of Service by Publication from Judge Verdin, and upon my becoming aware that this may have contained some errors, I had Publication done again. Soon thereafter, and due to my addressing these omissions and mistakes in a rather strenuous way with Mr. Steve Evatt, he left our firm.

I was pleased that Mr. Evatt agreed to appear at Monday's hearing to add facts concerning his phone calls with Defendant and his attempts to serve Plaintiff's Complaint, which were not included in his affidavit, although he was not allowed to testify.

As such I am presenting herewith, my own affidavit that lays out what Mr. Evatt told me and what I believed were the circumstances surrounding the attempts at service of the Defendant in this case.

Attached herewith is a copy of the email Mr. Evatt that I referenced, that was sent as instructed by Defendant Dimaggio, to his attorney, pursuant to their phone conversation on September 1, 2022. Although Attorney McDaniel's email response the next day indicated that he was not authorized to accept service, he in fact was authorized to do so, the day before by Defendant DiMaggio himself to Mr. Evatt.

I do believe that a specific instruction by a party to deliver a Summons and Complaint to someone else, including his counsel, when then delivered, should be considered satisfactory service.

I have also attached copies of the numerous attempts by my staff, which I described during arguments on Monday, making additional efforts to serve Defendant by publication, which I instructed them to do out of an abundance of caution, since we believed Defendant was attempting to avoid service of Plaintiff's Summons and Complaint.

Attached are twenty-five (25) emails and electronic filing notices illustrating my staff's repeated attempts to also serve Defendant by Publication, which was Ordered and published twice, for six consecutive weeks, double what the publication rules require.

Initial service by publication, although including a mistake in the document Published, was done in good faith and provided Defendant with sufficient notice of a pending Civil Action against the Defendant. Although, ordinarily only the case Summons is published, the Order of Publication was actually published in the newspaper – which actually gave Defendant more detailed notice of the filed action, along with reference to the attempts at service Plaintiff was making.

Further, once I became aware that the publication in the newspaper did not include the Summons, I instructed my staff to re-submit the Summons for publication in the newspaper, again having it run for three consecutive weeks. Although counsel for Defendant argued this was completed after the one hundred twenty (120) period for service, Plaintiffs numerous attempts at serving Defendant began well before the expiration of that time period. And I again submit that relief from such errors is available under our Rules and caselaw, specifically the caselaw cited by counsel for Defendant, himself.

As I argued on behalf of the Plaintiff on Monday's hearing, these mistakes were made in good faith, by inexperienced staff, while I was out dealing with a critically serious medical condition. And these mistakes were labored over and corrected, which I respectfully submit, illustrate excusable neglect and mistake, for which relief is provided in the Rules, specifically Rule 60(b)(1) of our Rules of Civil Procedure.

Also, as a solo practitioner, I do not enjoy the benefit of partners or other associate lawyers to assist me, and unfortunately my staff was newly hired and as to Mr. Evatt, vastly exaggerated his prior law firm experience when hired soon before these events transpired.

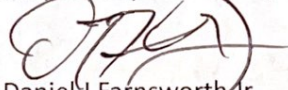
As noted above, the case law cited by Defendant's counsel actually supports the relief Plaintiff seeks here. Pelzer v. State, (662 SE2d 618), although a Statute of Limitations case, sets out that exceptions are to be made for time limits when circumstances of individualized hardship are shown, which I believe are clearly present here, Your Honor.

I further believe that Defendant Dimaggio is not being truthful with his attorney, in expressing, at least through argument at Monday's hearing, his claim that he had no knowledge of the pleadings and our attempts to serve the same, including his instructions to my staff for delivery to his former attorney. Such suspicions were based on his hanging up on Mr. Evatt during what is my understanding was a second phone call to Defendant Dimaggio, along with his refusing to come to the door of his residence when my staff clearly heard someone inside of the home. I do not believe the law and Court rules would be designed to protect a Defendant in his efforts to avoid service of process and the authority of the Court.

As our Rules are meant to allow parties to adjudicate their disputes on their merits, so that the public may have confidence in our system of justice, I would submit that it is unjust to dismiss Plaintiff's action when actual contact was made with the Defendant concerning service, numerous additional good faith attempts were made, including publication of information clearly referencing what Defendant is believed to have likely received from his former counsel, all happening during my serious personal medical hardship occurring at that time, which prohibited me from being able to clearly and more effectively address their efforts.

I thank you for your close consideration of this matter and ask that you please allow the relief that I believe the Rules and case law provide, requiring the Defendant to answer Plaintiff's Complaint and allow the parties to resolve this dispute on its merits.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D. Farnsworth Jr.", written over a circular stamp or seal.

Daniel J Farnsworth Jr
Counsel for Plaintiff

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Ronald Carl Cox,)
Plaintiff,) C/A NO: 2022-CP-23-02830

v.) **AFFIDAVIT OF**
Michael John Dimaggio,) **DANIEL J. FARNSWORTH JR.**
Defendant.)

PERSONALLY appeared before me the undersigned attorney, who first being duly sworn, deposes and says:

That I, Daniel J. Farnsworth, Jr., instructed my law office staff to serve the filed Summons and Complaint in the above action on Defendant in August of 2022. Thereafter, my staff informed me that they had obtained Defendant's phone number and two addresses from a skip-trace resource. On September 1, 2022, Counsel was told by staff member, Mr. Evatt, that he called Defendant Dimaggio and explained the Summons and Complaint we had for delivery to him, and I was further informed Defendant Dimaggio told Mr. Evatt to send it to his lawyer, giving the name of Attorney Austin McDaniel of Anderson, South Carolina. Mr. Evatt told me that he called Defendant Dimaggio a second time and Defendant Dimaggio ended that call, hanging up on Mr. Evatt.

Counsel was then informed by his staff members, on September 2, 2022, that we had received an email from Attorney McDaniel stating that he was not authorized to accept service on behalf of Defendant Dimaggio. Although, I believed service to have been proper, since Defendant Dimaggio explicitly instructed Mr. Evatt to send process to Attorney McDaniel, out of an abundance of caution, I asked Mr. Evatt and Ms. Lipscomb to travel to Defendant

Dimaggio's residence and again attempt personal service. I was then told that on or about September 8, 2022, that Mr. Evatt and Ms. Lipscomb attempted personal service of the Summons and Complaint on Defendant Dimaggio at his residence. I was informed that Dimaggio did not come to his door, although my staff heard keys jingling and a dog barking inside. It is my understanding that Mr. Evatt and Ms. Lipscomb then spoke with neighbors, who confirmed Defendant Dimaggio resided there, that he walked his dog most mornings and had groceries delivered there.

Due to Defendant Dimaggio speaking on the phone with my staff, then again hanging up on a call after being told what legal papers we had for him, and his refusal to answer their knock at his door, when there was obvious signs of someone home at the time, I concluded that Defendant Dimaggio was attempting to evade service in this matter.

I then instructed Mr. Evatt and Ms. Lipscomb to change gears and seek an Order from the Court allowing service by Publication. As I was suffering from a serious cervical spine issue, both months before a fusion surgery done on September 13, 2022, and a tremendously difficult recovery for months after, I placed trust in my staff to carry out my instructions and have service completed.

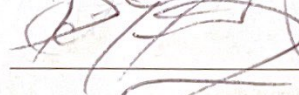
I was later informed that an Order for Service by Publication was granted, and that such notice was being published in the local newspaper for the three consecutive weeks as required by the rules. Thereafter, I came to realize that the notice published was not the typical Summons that is usually included in the newspaper. I then asked Mr. Evatt and Ms. Lipscomb to re-submit the Summons and re-publish the notice for an additional three consecutive weeks, again out of an abundance of caution to make sure Defendant Dimaggio could not claim he was not properly served under our Court Rules. Although the publications appeared after the time set out for

service of our Summons and Complaint, my staff's efforts had begun well before that time, and a timely Motion for Service by Publication was submitted to the Court.

It is my belief that Defendant Dimaggio sought to avoid service, from the first phone call by Mr. Evatt explaining the Summons and Complaint that we had for delivery to him. It was my understanding at the time that Defendant Dimaggio hung up on my staff during a second call to him, then refused to answer the door when my staff appeared to personally serve him at his residence, and then hired counsel to attempt to avoid service by publication, which although not perfect, publicly notified defendant of what he had been made aware of my direct phone contact, travel to his residence and sent to his former attorney, who certainly shared this Summons and Complaint with Defendant Dimaggio.

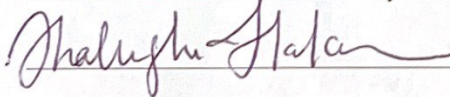
It is my solemn belief that my staff's attempts to secure service were made in good faith, although admittedly with several errors and mistakes, and that Defendant Dimaggio in fact did receive notice of the proceedings filed against him. I also firmly believe that a Defendant in a meritorious civil claim should not be allowed to avoid service and escape an adjudication of a dispute on its merits, particularly when our Rules and caselaw provide for relief from such errors in unique circumstances such as these.

FURTHER AFFIANT SAITH NOT.



Daniel J. Farnsworth, Jr.

Sworn to before me this 27th day of July, 2023



Notary Public for the State of South Carolina

My Commission Expires on 06/29/2031



Dan Farnsworth <dan@farnsworthlawoffices.com>

Fwd: Cox v DiMaggio - Monday's Motion Hearing

1 message

Bootney Lee <d_farns@icloud.com>

Fri, Jul 28, 2023 at 12:37 PM

To: Bootney Lee <dan@farnsworthlawoffices.com>

_df

Begin forwarded message:

From: Kirk Moorhead <kirk@mllawyers.com>**Date:** July 28, 2023 at 12:02:55 PM EDT**To:** "Morgan, Grenville D. Secretary (Brittany Long)" <gmorgansc@sccourts.org>**Cc:** Bootney Lee <d_farns@icloud.com>, "Morgan, Grenville D. Law Clerk (Robert Barrow)" <gmorganlc@sccourts.org>**Subject: Re: Cox v DiMaggio - Monday's Motion Hearing**

I am out of the office today with my family. Please allow me until next week to respond.

Kirk

Sent from my iPhone

On Jul 28, 2023, at 12:00 PM, Morgan, Grenville D. Secretary (Brittany Long) <gmorgansc@sccourts.org> wrote:

Good Morning,

I hope everyone is doing well!

Since we received these documents after the hearing in this matter, Judge Morgan would like to give Mr. Moorhead an opportunity to respond before he makes a decision.

Thank you,

Brittany Long

Administrative Assistant to the Honorable G.D. Morgan, Jr.

305 East North Street, Suite 315

Greenville SC, 29601

phone: (864) 467.8406

fax: (803) 734.1129

From: Bootney Lee <d_farns@icloud.com>

Sent: Thursday, July 27, 2023 1:11 PM

To: Morgan, Grenville D. Secretary (Brittany Long) <gmorgansc@sccourts.org>;
kirk@mllawyers.com

Subject: Cox v DiMaggio - Monday's Motion Hearing

***** EXTERNAL EMAIL:** This email originated from outside the organization.
Please exercise caution before clicking any links or opening attachments. ***

Please see attached Correspondence of today's date (bottom of attachments), Affidavit of Daniel Farnsworth, and other exhibits referenced during Monday's motion hearing

Thank you.

-Dan Farnsworth, Jr.

_df

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copies of the message and any attachments.



Dan Farnsworth &lt;dan@farnsworthlawoffices.com&gt;

---

**RE: Cox v DiMaggio - Monday's Motion Hearing**1 message

---

**Kirk Moorhead** <kirk@mllawyers.com>

Wed, Aug 2, 2023 at 3:43 PM

To: "Morgan, Grenville D. Secretary (Brittany Long)" &lt;gmorgansc@sccourts.org&gt;, Bootney Lee &lt;d\_farns@icloud.com&gt;

Cc: "Morgan, Grenville D. Law Clerk (Robert Barrow)" &lt;gmorganlc@sccourts.org&gt;, D Farnsworth

&lt;Dan@farnsworthlawoffices.com&gt;, Tracy Ceres &lt;tracy@mllawyers.com&gt;

Judge Morgan,

Attached, please find my response to the submissions of Mr. Farnsworth on behalf of the Plaintiff.

I have included a letter/brief, an affidavit of Michael John Dimaggio, the Defendant, and an audio clip of a voicemail message from Mr. Evatt, the process server for Mr. Farnsworth, to the Defendant.

The affidavit has been reviewed by Mr. Dimaggio but is currently unsigned. Mr. Dimaggio is making arrangements to appear before a notary to get it signed. In the interest of time, having gone over the affidavit with Mr. Dimaggio, I am submitting it as is. I will supplement with the signed affidavit, hopefully tomorrow.

If you have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,

Kirk Moorhead

**J. KIRKMAN MOORHEAD**

2203 N. Main St.  
Anderson, SC 29621  
Main: 864-225-9155  
Fax: 864-225-9151

---

**From:** Morgan, Grenville D. Secretary (Brittany Long) <[gmorgansc@sccourts.org](mailto:gmorgansc@sccourts.org)>  
**Sent:** Friday, July 28, 2023 12:46 PM  
**To:** Bootney Lee <[d\\_farns@icloud.com](mailto:d_farns@icloud.com)>; Kirk Moorhead <[kirk@mllawyers.com](mailto:kirk@mllawyers.com)>  
**Cc:** Morgan, Grenville D. Law Clerk (Robert Barrow) <[gmorganlc@sccourts.org](mailto:gmorganlc@sccourts.org)>  
**Subject:** RE: Cox v DiMaggio - Monday's Motion Hearing

Certainly, Judge Morgan will allow this time for a response.

Brittany Long

Administrative Assistant to the Honorable G.D. Morgan, Jr.

305 East North Street, Suite 315

Greenville SC, 29601

phone: (864) 467.8406

fax: (803) 734.1129

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**Sent:** Friday, July 28, 2023 12:37 PM  
**To:** Kirk Moorhead <[kirk@mllawyers.com](mailto:kirk@mllawyers.com)>  
**Cc:** Morgan, Grenville D. Secretary (Brittany Long) <[gmorgansc@sccourts.org](mailto:gmorgansc@sccourts.org)>; Morgan, Grenville D. Law Clerk (Robert Barrow) <[gmorganlc@sccourts.org](mailto:gmorganlc@sccourts.org)>  
**Subject:** Re: Cox v DiMaggio - Monday's Motion Hearing

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Yes, ma'am. Thank you.

\_dan

On Jul 28, 2023, at 12:02 PM, Kirk Moorhead <[kirk@mllawyers.com](mailto:kirk@mllawyers.com)> wrote:

I am out of the office today with my family. Please allow me until next week to respond.

Kirk



Sent from my iPhone

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Good Morning,

I hope everyone is doing well!

Since we received these documents after the hearing in this matter, Judge Morgan would like to give Mr. Moorhead an opportunity to respond before he makes a decision.

Thank you,

Brittany Long

Administrative Assistant to the Honorable G.D. Morgan, Jr.

305 East North Street, Suite 315

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---

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**Sent:** Thursday, July 27, 2023 1:11 PM

**To:** Morgan, Grenville D. Secretary (Brittany Long) <[gmorgansc@sccourts.org](mailto:gmorgansc@sccourts.org)>;  
[kirk@mlawyers.com](mailto:kirk@mlawyers.com)

**Subject:** Cox v DiMaggio - Monday's Motion Hearing

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Please see attached Correspondence of today's date (bottom of attachments), Affidavit of Daniel Farnsworth, and other exhibits referenced during Monday's motion hearing

Thank you.

-Dan Farnsworth, Jr.

\_df

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3 attachments



Judge Morgan ltr.pdf

395K



Affidavit of Dimaggio.doc

41K



voicemail-89.m4a

69K



Moorhead LeFevre, PA

August 2, 2023

Honorable G. D. Morgan, Jr.
305 East North Street
Greenville, South Carolina 29601

RE: Cox v. DiMaggio
Civil Action Number 2022-CP-23-02830

Dear Judge Morgan,

As you know I represent Michael Dimaggio in the above referenced matter.

Last week, Mr. Farnsworth, attorney for the Plaintiff, submitted a number of materials in the days after the hearing and you kindly allowed me time to respond.

The Plaintiff argues that (1) he was led to believe that service was being handled by his staff; (2) "that a specific instruction by a party to deliver a Summons and Complaint to someone else, including his counsel, when then delivered, should be considered satisfactory service"; (3) that publication of the incorrect document, when done in good faith, should constitute notice to the Defendant and in fact gives the Defendant greater insight into the civil action against him; (4) that mistakes were made, but were made in good faith and constitute excusable neglect pursuant to Rule 60(b)(1) (dealing with relief from judgments); (5) that he believes the Defendant is not being truthful in his representations that he was unaware of a civil summons and complaint when contacted by Mr. Evatt and in hanging up on Mr. Evatt during a second call.

What is never argued is that personal or substitute service of the Defendant was obtained within the 120 days after the filing of the Summons and Complaint and after the Statue of Limitations had run. In order for the Court to conclude that service was sufficient, the Court would have to conclude (1) the service on an attorney who declined authorization to accept service is, in fact, good service because the Defendant disputedly told a process server to send it to his attorney; or (2) that the deadline for service of process should be equitably tolled due to the Defendant's attempts to evade service. Tolling would be required for the attempts made by publication as in every date of publication, even the erroneous ones, occurred after after the 120 day period allowed for service pursuant to S.C. Code Ann. §15-3-20 and SCRCivP 3(a).

GENERAL OBJECTION

Mr. Farnsworth's affidavit of July 27, 2023, is almost entirely based upon hearsay. To the extent that those hearsay elements are utilized as evidence to contest the Defendant's Motion to Dismiss, I object to the same. Mr. Evatt and Ms. Lipscomb, the employees of Mr. Farnsworth who worked with him in this matter, timely appeared the hearing on July 24th and neither have been shown to be unavailable. Any affidavit's pertaining to their personal knowledge should come directly from them.

ACCEPTANCE OF SERVICE BY ATTORNEY

There is no evidence that Attorney Austin McDaniel was authorized to accept service for the Defendant. To the contrary, the evidence is that Mr. Dimaggio believed that Mr. Evatt had contacted him about a matter involving the victim's compensation fund, which is a matter that Mr. McDaniel may have handled.

In his affidavit of July 27, 2023, Mr. Farnsworth, through hearsay, advises that Steve Evatt called the Defendant and explained that he had a Summons and Complaint for delivery to him. The affidavit of Michael Dimaggio advises that Mr. Evatt represented he was with the victims' fund. Per the affidavit, Mr. Dimaggio relates that he had received funds from the South Carolina Victims's Compensation Fund for the payment of medical bills he incurred after having been rendered unconscious by a kick to his face and a stomp with the boot heel of the Plaintiff's brother. The Plaintiff and his brother were caused to reimburse the South Carolina Victim's Compensation Fund as a condition of dismissing felony charges against them and as such were well aware of Mr. Dimaggio's involvement with the same. Mr. Dimaggio denies that Mr. Evatt ever explained that he had a civil summons and complaint to serve upon him, therefore he could not have been avoiding service of which he was unaware. Please also note that Mr. Evatt relates in his first person affidavit that he advised the Defendant that he had "legal papers" for him and makes no mention of a Summons and Complaint.

Mr. Dimaggio is further providing a recording of a voicemail received on his telephone from Steve Evatt, where Mr. Evatt states, verbatim,

"Yes, Mr. Dimaggio, this is Steve, we spoke yesterday. Uh, you, uh, you gave me your attorney's information however your attorney does not, or he says he is not your attorney, he doesn't rep you, represent you in any matter. Uh, I need you to call me back as soon as possible or I'll just, ah, have to go up and talk to your, your, your employer or something, so, um I'd like to get this taken care of. This has nothing to do with, um, with uh, criminal charges. So, thank you."

This voicemail establishes that Evatt was promptly notified that Attorney McDaniel could not accept service. Significantly, Evatt feels it necessary to advise that "this has nothing to do with...criminal charges." A logical reason for him to explain this is that Evatt understood that Dimaggio had reason to believe that Evatt's previous call concerned criminal matters. Coupled with Dimaggio's prior involvement with the SC Victim's Compensation Fund, this lends further credence to Dimaggio's representation in his affidavit that he believed that the call from Evatt involved a criminal matter and that Dimaggio was therefore NOT ON NOTICE OF A CIVIL COMPLAINT AGAINST HIM. Given that this series of event occurred September 1st and 2d, as established by the

emailing between Steve Evatt and Austin McDaniel and provided by Mr. Farnsworth, one is led to the conclusion that Dimaggio did not refer Evatt to McDaniel because McDaniel was authorized to accept service, but because Dimaggio believed that Evatt's contact with him concerned a criminal matter.

"No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service" SCRCivP 4(j). No such writing was delivered or alleged to have been delivered in this case.

In the absence of acceptance by Attorney McDaniel, a designation by the Defendant that McDaniel is his attorney for service of process, which is denied to have occurred, is insufficient to constitute service in this case.

EQUITABLE TOLLING

In order for Service by Publication to be effective in this case, the Court will have to find that there is a basis to extend the 120 day deadline for service established by S.C. Code Ann. §15-3-20 and SCRCivP 3(a) as every date of publication in this case, even the erroneous ones, occurred after 120 days from filing.

§ 15-3-20. General rule as to time for commencement

(A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.

RULE 3. COMMENCEMENT OF ACTION

(a) Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if:

(1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or

(2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

Cases in South Carolina have addressed equitable tolling of the Statute of Limitations during the 120 period set forth by the above Statute and Rule. In those cases, the Court has analyzed whether to extend the Statute of Limitations for the time period when the Plaintiff may have been prevented from serving the Defendant.

In *Hooper v Ebenezer Sr. Services*, 687 S.E.2d 29, 386 S.C. 108 (S.C. 2009), the Supreme Court extended the Statute of Limitations where the Defendant was unable to have been served for until 127 days after filing. Hooper is distinguishable from this case because the Defendant there was a nursing facility that had sold and changed names. The Defendant's registered agent for service had moved without a forwarding address and when a residential address for the registered agent was located, the agent had divorced his wife and moved away and his location was unknown. The Plaintiff had made continued attempts to serve the agent over the course of the 120 days and did not fail to serve the Defendant due to their own errors or delay, but diligently and competently attempted service through process servers and two sheriff's offices. In the Hooper case, the Court noted that the Defendant had failed to comply with State statutes that required an up-to-date Registered Agent for Service. Even then, the Court noted that, "under the unique circumstances of this case, we conclude it is appropriate to equitably toll the statute of limitations for the time Hooper spent in pursuit of Ebenezer's nonexistent agent."

Other cases have further set out guidelines for equitable tolling.

"[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result. *Pelzer v. State*, 662 S.E.2d 618, 378 S.C. 516 (S.C. App. 2008).

In this case, the Plaintiff made a single attempt to serve the Defendant at an address that they were able to verify. The more obvious reasons that they failed to obtain service resulted from their own acts and omissions in attempting (or delaying to attempt) service.

First and foremost, the Plaintiff delayed filing suit until May 31, 2023 the day before the running of the Statute of limitations. The Defendant believes that this was intended to be geared toward protecting the Plaintiff's brother from being sued. The Plaintiff's brother, in the course of events that gave rise to this Plaintiff's action, was filmed kicking the Defendant in the face rendering him unconscious, then stomping the unconscious Defendant in the head with his boot heel. Whatever the reason, the Plaintiff elected to wait until the Statute of limitations was expiring to file suit. This in and of itself, placed the Plaintiff in a position where careful attention was required to ensure the Plaintiff's rights would be protected.

However, in direct contrast to careful attention, the Plaintiff inexplicably has produced no evidence that any attempt to make service of the Summons and Complaint until the 91st day after filing suit.

When the attempts began, the employee who performed the skip-trace failed to

provide the process servers with the correct address, even though It appears that he was in possession of the same.

Then, the process server served an attorney who did not have authority to accept service with the Summons via email. No Complaint was served. As previously discussed, the attorney promptly notified the process server that he could not accept service.

On September 8, 2023 an attempt to serve the Defendant at a verified residential address failed. However, despite verifying the address on that day through neighbors and the neighbors advising the process server the next day that groceries had been delivered to the residence, no further attempts were made to serve the Defendant at the residence.

Instead, the Plaintiff sought to serve the Defendant through publication. On September 9, 2023 a Petition for publication was filed that failed to provide an affidavit testifying that service of the summons could not be made after due diligence was attached as required by S.C. Code Ann. §15-9-710. In correcting that Petition, on September 30, 2023 a new petition was filed that included an affidavit. Significantly, however, this corrected Petition was filed AFTER the 120 had expired. Also, in that September 30, 2023 Petition, Mr. Farnsworth represented that “because the current place of residence of the Defendant, Michael John Dimaggio cannot be ascertained after the exercise of reasonable diligence.” This was simply not the case.

By failing to file a Petition for Publicatin that complied with statute, the Plaintiff’s lost 21 days.

The Order for publication was granted October 6, 2023. However, it was then an additional 21 days before a document was first published. And, it was the incorrect document. Ultimately, the Plaintiff finally arranged to publish the Summons as required by Statute, but it was not until December 27, 2022 that the first publication was done and it was January 10, 2023 when proper publication was completed.

The series of errors beginning with the August 31 service attempts on incorrect addresses when a correct address had been obtained, cost the Plaintiff 132 days until service by publication was complete. That was on top of 90 days od delay in never attempting service. Under no circumstance could this be considered reasonable diligence.

AFFIDAVIT OF FARNSWORTH

The affidavit of Mr. Farnsworth is replete with legal nonsense and inconsistencies with other information provided to the Court.

- Mr. Farnsworth, through hearsay, advises that Steve Evatt called the Defendant and explained that he had a Summons and Complaint for delivery to him. Mr. Evatt relates in his first person affidavit that he advised the Defendant that he had “legal papers” for him.
- Mr. Farnsworth, through hearsay, advises that Mr Evatt called Mr. Dimaggio a second

time that Mr. Dimaggio “ended that call, hanging up on Mr. Evatt.” Mr. Dimaggio’s denies receiving a second call an hanging up, but acknowledges receiving a voicemail message where Steve Evatt advises that “ this has nothing to do with, um, with uh, criminal charges.” Mr. Evatt’s first person affidavit notes that after the call when he advised the Defendant that he had “legal papers” for him, “Mr. Dimaggio has not responded to any other calls.” Contrary to the representation by Mr. Farnsworth that there was a second call by Evatt to Dimaggio where he hung up. There was no second call where Mr. Dimaggio hung up on Mr. Evatt. To the extent that Mr. Farnsworth suggests that Mr. Dimaggio was *avoiding service of process* by hanging up on calls, that isn’t true. In addition, in Mr. Farnsworth’s first Petition for service by Publication, in Paragraph C, he notes that “[A}fter the initial phone call, all other attempts to contact the Defendant by phone resulted in no answer.” We believe that this establishes there was no second telephone call between Evatt and the Defendant.

- Mr Farnsworth notes that email service of the Summons and Complaint on Mr. McDaniel, the Defendant’s criminal lawyer is “proper, since Defendant Dimaggio instructed Mr Evatt to send process to Attorney McDaniel. Mr. Farnsworth presented the email exchange between Steve Evatt and Mr. McDaniel. McDaniel advises “I do not represent Mr. Dimaggio on the attached civil action and therefore cannot accept service on his behalf.” On the face of the email and, more importantly, the Certificate of Service pertaining to Mr. McDaniel, Evatt swears that the Summons, without mention of the complaint, was served by email on Mr. McDaniel. The sworn Certificate of Service fails on its face as, in order to commence a civil action, the Summons AND Complaint must be served.
- Mr. Farnsworth notes that he asked Mr. Evatt and Ms. Lipscomb to “again attempt personal service” at The Defendant’s residence. He relates that there was a single attempt on September 8, 2022. to serve the Defendant at his correct address and that the address was confirmed by neighbors and that Dimaggio received grocery deliveries there. Mr. Evatt’s affidavit further relates that neighbors contacted him the next day (September 9, 2022) and advise that groceries had been delivered to the residence of the Defendant. There is no representation by Mr. Farnsworth or Mr. Evatt, despite confirming the address of the Defendant, that any further attempt were made to serve him there after the single attempt on September 8, 2022.
- Mr. Farnsworth relates that he concluded because of the Defendant “hanging up on a call” (which Mr. Evatt never says anything about in his affidavit) and refusing to answer their knock at his door on a single attempt, that the Defendant is attempting to evade service. He related that he “then instructed Evatt and Lipscomb to seek an Order from the Court allowing service by publication.
- Mr. Farnsworth later in the affidavit suggests that the Defendant attempted to evade service by publication by hiring a lawyer. Given that there were no filings opposing the same, I am not sure how the Defendant attempted to avoid service by publication.
- Mr. Farnsworth relates that he instructed Evatt and Lipscomb to attempt service by

publication. In that first attempt, on September 9, 2022, Mr. Farnsworth failed to include a supporting affidavit testifying that service of the summons could not be made after due diligence was attached as required by S.C. Code Ann. §15-3-20.

- On September 30, 2022, a second Petition for Publication was filed, this time including a supporting affidavit signed by Mr. Evatt. In that Petition, signed by Mr. Farnsworth, he asks the Court, in Paragraph 5, “[t]hat service of the Summons by mail be waived because the current place of residence of the Defendant, Michael John Dimaggio cannot be ascertained after the exercise of reasonable diligence.” Clearly, the residence of the Defendant was identified by Mr. Farnsworth, but he elected not to attempt further service there, even after verification by the neighbors on September 9, 2022 that the Defendant had just had groceries delivered there.
- The Court granted the Plaintiff’s Petition for Service by Publication on October 6, 2022. Thereafter, the Plaintiff published the “Order for Publication”, not the Summons, as required by law. On January 17, 2023, the Defendant filed his Motion to Dismiss which is the subject of this argument. In that Motion, the Defendant argues that the Plaintiff failed by publishing the “Order for Publication” instead of the Summons. Despite this notice of this shortcoming to the Plaintiff, the Plaintiff filed proof of service by publication of the “Order for Publication on April 25, 2023. To date, the Plaintiff STILL HAS NOT FILED PROOF OF SERVICE OF THE SUMMONS.

CONCLUSION

The combined failures of the Plaintiff to effect service within the rules, failure to comply with Statutory requirements by error or oversight, and failure to proceed with diligence in serving the Defendant after filing suit at the expiration of the Statute of limitations has compromised the rights of the Plaintiff to pursue a remedy. The plaintiff attempts to direct criticism at the Defendant, however, these issues were not the result of the acts of the Defendant. Even assuming arguendo that the Defendant was attempting to evade service by the Plaintiff, the Defendant cannot be blamed for a 91 day delay in the Plaintiff never attempting service, nor for the some 132 days of delay due to errors in attempting to serve by publication. There simply can be no way to find that the failure of the plaintiff to perfect service in a timely manner lays anywhere else but at the feet of the Plaintiff.

Respectfully Submitted,



J. Kirkman Moorhead

JKM

Attachments:

Affidavit of Michael John Dimaggio (initially unsigned - signed copy to follow)
Audio Clip of Voicemail Message from Evatt to Dimaggio

VOICEMAIL FROM STEVEN EVATT
ATTACHED VIA THUMB DRIVE
PRODUCED BY LEGAL EAGLE

ASTATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

AFFIDAVIT OF

MICHAEL JOHN DIMAGGIO

PERSONALLY APPEARED before me, Michael John Dimaggio, who being duly sworn, deposes and states as follows:

My name is Michael John Dimaggio and I currently reside at 200 S. Academt Street, Apt. 2427, Greenville, South Carolina 29601. I am the same Michael Dimaggio that is named in the above captioned case.

I was contacted by telephone on or about September 1, 2023 by a man I now know to be Steve Evatt. In that conversation, Mr. Evatt represented that he was with the “victim’s fund” and that he had “legal papers” for me. I took this representation to mean the South Carolina Victim’s Compensation Fund.

I had previously received money from the SC Victim’s Compensation Fund as a result of being the victim of a crime charging Ronald Carl Cox III, the Plaintiff in this matter, and his brother, John Grant Cox, with assault and battery by mob.

The charges against these two brothers were eventually dismissed. As a condition of dismissal, they were obligated to reimburse the SC Victim’s Compensation Fund for the amount advanced to me for medical bills I incurred arising from being kicked in the face and rendered unconscious by John Grant Cox and thereafter stomped on me head with his boot heel. My memory of this is poor, but it was captured on a bystander’s mobile phone video.

In the course of these events, I was later charged with Public Disorderly Conduct. I obtained a lawyer, Austin McDaniel, for this purpose.

When Mr. Evatt advised that he was with the “victim’s fund” I was in my car onand taking my dog to the veterinarian. I referred him to Mr. McDaniel. At no time did Mr. Evatt advise that he had a Summons and Complaint in a civil suit against me that needed to be served upon me. At that time, I was unaware a civil suit had been filed against me. I did not refer him to Mr. McDaniel to accept service of a Summons and Complaint on my behalf because I was unaware there even was a Summons and Complaint filed against me.

I never spoke with Mr. Evatt again. I did receive a voicemail from him the following day that I have provided to my attorney. In that voicemail, Mr. Evatt notes that the matter does not have to do with a criminal case. He still did not provide an explanation as to what the papers pertained to. I still believed they had to do with the SC Victim’s Compensation Fund, but was confused as to what they might be.

This affidavit (sworn statement) was drafted for me by attorney, J. Kirkman Moorhead. I have had an opportunity to review it for accuracy and for content and I have changed and corrected things that I felt were not fully accurate or that were better said in a different manner. By signing it below, I acknowledge and swear that the statements are true and correct and for items where I state my belief, it provides a true and accurate description of my belief.

FURTHER AFFIANT SAYETH NOT.

Michael John Dimaggio

Sworn to before me this ____ day
of _____, 2023.

Notary Public for South Carolina



Dan Farnsworth <dan@farnsworthlawoffices.com>

RE: Cox v DiMaggio - Monday's Motion Hearing

1 message

Kirk Moorhead <kirk@mllawyers.com>

Thu, Aug 3, 2023 at 1:31 PM

To: "Morgan, Grenville D. Secretary (Brittany Long)" <gmorgansc@sccourts.org>, Bootney Lee <d_farns@icloud.com>

Cc: "Morgan, Grenville D. Law Clerk (Robert Barrow)" <gmorganlc@sccourts.org>, D Farnsworth <Dan@farnsworthlawoffices.com>, Tracy Ceres <tracy@mllawyers.com>

Dear Judge Morgan,

Please find the signed affidavit of Michael Dimaggio which should replace the unsigned affidavit submitted yesterday.

Kirk Moorhead

J. KIRKMAN MOORHEAD

2203 N. Main St.
Anderson, SC 29621
Main: 864-225-9155
Fax: 864-225-9151

From: Kirk Moorhead**Sent:** Wednesday, August 02, 2023 3:43 PM**To:** Morgan, Grenville D. Secretary (Brittany Long) <gmorgansc@sccourts.org>; Bootney Lee <d_farns@icloud.com>**Cc:** Morgan, Grenville D. Law Clerk (Robert Barrow) <gmorganlc@sccourts.org>; D Farnsworth <Dan@farnsworthlawoffices.com>; Tracy Ceres <tracy@mllawyers.com>**Subject:** RE: Cox v DiMaggio - Monday's Motion Hearing

Judge Morgan,

Attached, please find my response to the submissions of Mr. Farnsworth on behalf of the Plaintiff.

I have included a letter/brief, an affidavit of Michael John Dimaggio, the Defendant, and an audio clip of a voicemail message from Mr. Evatt, the process server for Mr. Farnsworth, to the Defendant.

The affidavit has been reviewed by Mr. Dimaggio but is currently unsigned. Mr. Dimaggio is making arrangements to appear before a notary to get it signed. In the interest of time, having gone over the affidavit with Mr. Dimaggio, I am submitting it as is. I will supplement with the signed affidavit, hopefully tomorrow.

If you have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,

Kirk Moorhead

J. KIRKMAN MOORHEAD



2203 N. Main St.
Anderson, SC 29621
Main: 864-225-9155
Fax: 864-225-9151

From: Morgan, Grenville D. Secretary (Brittany Long) <gmorgansc@sccourts.org>
Sent: Friday, July 28, 2023 12:46 PM
To: Bootney Lee <d_farns@icloud.com>; Kirk Moorhead <kirk@mllawyers.com>
Cc: Morgan, Grenville D. Law Clerk (Robert Barrow) <gmorganlc@sccourts.org>
Subject: RE: Cox v DiMaggio - Monday's Motion Hearing

Certainly, Judge Morgan will allow this time for a response.

Brittany Long

Administrative Assistant to the Honorable G.D. Morgan, Jr.

305 East North Street, Suite 315

Greenville SC, 29601

phone: (864) 467.8406

fax: (803) 734.1129

From: Bootney Lee <d_farns@icloud.com>

Sent: Friday, July 28, 2023 12:37 PM

To: Kirk Moorhead <kirk@mllawyers.com>

Cc: Morgan, Grenville D. Secretary (Brittany Long) <gmorgansc@sccourts.org>; Morgan, Grenville D. Law Clerk (Robert Barrow) <gmorganlc@sccourts.org>

Subject: Re: Cox v DiMaggio - Monday's Motion Hearing

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Yes, ma'am. Thank you.

_dan

On Jul 28, 2023, at 12:02 PM, Kirk Moorhead <kirk@mllawyers.com> wrote:

I am out of the office today with my family. Please allow me until next week to respond.

Kirk

Sent from my iPhone

On Jul 28, 2023, at 12:00 PM, Morgan, Grenville D. Secretary (Brittany Long) <gmorgansc@sccourts.org> wrote:

Good Morning,

I hope everyone is doing well!

Since we received these documents after the hearing in this matter, Judge Morgan would like to give Mr. Moorhead an opportunity to respond before he makes a decision.

Thank you,

Brittany Long

Administrative Assistant to the Honorable G.D. Morgan, Jr.

305 East North Street, Suite 315

Greenville SC, 29601

phone: (864) 467.8406

fax: (803) 734.1129

From: Bootney Lee <d_farns@icloud.com>

Sent: Thursday, July 27, 2023 1:11 PM

To: Morgan, Grenville D. Secretary (Brittany Long) <gmorgansc@sccourts.org>;
kirk@mlawyers.com

Subject: Cox v DiMaggio - Monday's Motion Hearing

***** EXTERNAL EMAIL:** This email originated from outside the organization.
Please exercise caution before clicking any links or opening attachments. ***

Please see attached Correspondence of today's date (bottom of attachments), Affidavit of Daniel Farnsworth, and other exhibits referenced during Monday's motion hearing

Thank you.

-Dan Farnsworth, Jr.

_df

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee

and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



**Signed Dimaggio Affidavit.pdf**

1456K



ASTATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

AFFIDAVIT OF

MICHAEL JOHN DIMAGGIO

---

PERSONALLY APPEARED before me, Michael John Dimaggio, who being duly sworn, deposes and states as follows:

My name is Michael John Dimaggio and I currently reside at 200 S. Academt Street, Apt. 2427, Greenville, South Carolina 29601. I am the same Michael Dimaggio that is named in the above captioned case.

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The charges against these two brothers were eventually dismissed. As a condition of dismissal, they were obligated to reimburse the SC Victim's Compensation Fund for the amount advanced to me for medical bills I incurred arising from being kicked in the face and rendered unconscious by John Grant Cox and thereafter stomped on me head with his boot heel. My memory of this is poor, but it was captured on a bystander's mobile phone video.



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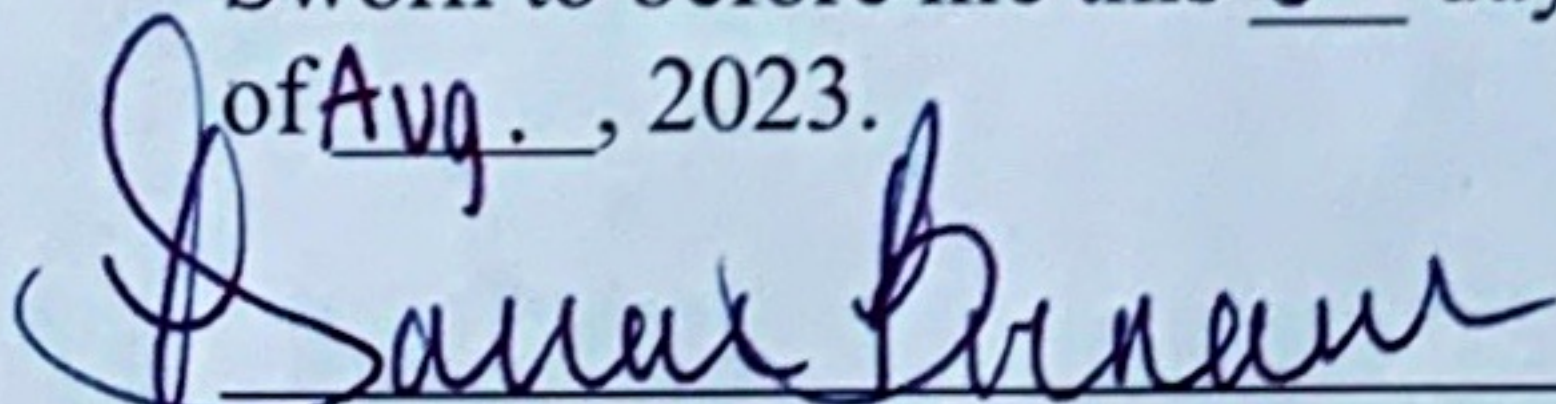
When Mr. Evatt advised that he was with the "victim's fund" I was in my car onand taking my dog to the veterinarian. I referred him to Mr. McDaniel. At no time did Mr. Evatt advise that he had a Summons and Complaint in a civil suit against me that needed to be served upon me. At that time, I was unaware a civil suit had been filed against me. I did not refer him to Mr. McDaniel to accept service of a Summons and Complaint on my behalf because I was unaware there even was a Summons and Complaint filed against me.

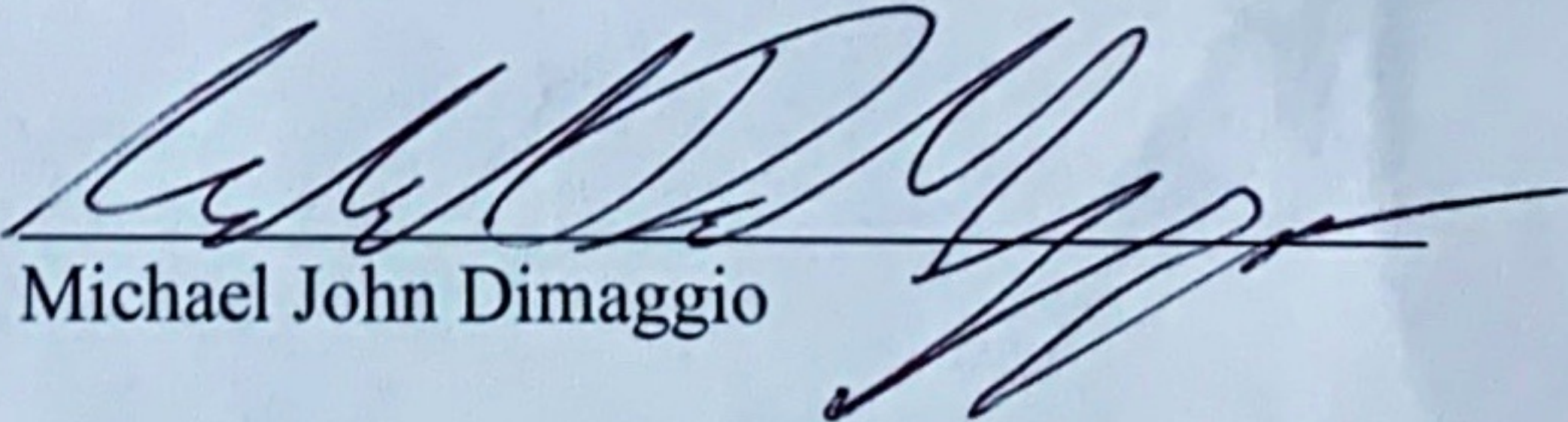
I never spoke with Mr. Evatt again. I did receive a voicemail from him the following day that I have provided to my attorney. In that voicemail, Mr. Evatt notes that the matter does not have to do with a criminal case. He still did not provide an explanation as to what the papers pertained to. I still believed they had to do with the SC Victim's Compensation Fund, but was confused as to what they might be.

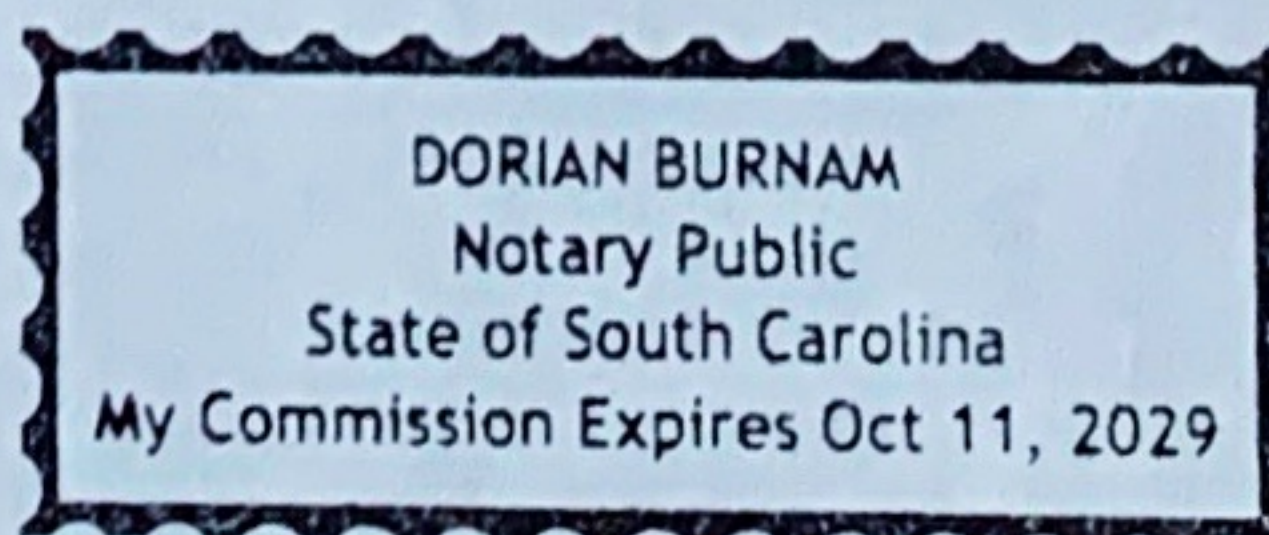
This affidavit (sworn statement) was drafted for me by attorney, J. Kirkman Moorhead. I have had an opportunity to review it for accuracy and for content and I have changed and corrected things that I felt were not fully accurate or that were better said in a different manner. By signing it below, I acknowledge and swear that the statements are true and correct and for items where I state my belief, it provides a true and accurate description of my belief.

FURTHER AFFIANT SAYETH NOT.

Sworn to before me this 3 day  
of Aug., 2023.

  
Notary Public for South Carolina

  
Michael John Dimaggio







Dan Farnsworth &lt;dan@farnsworthlawoffices.com&gt;

---

**RE: Cox v. DiMaggio - Plaintiff's reply to Defendant's Affidavit**

1 message

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**Kirk Moorhead** <kirk@mllawyers.com>

Wed, Aug 9, 2023 at 4:46 PM

To: "gmorgansc@sccourts.org" &lt;gmorgansc@sccourts.org&gt;

Cc: D Farnsworth &lt;Dan@farnsworthlawoffices.com&gt;

Judge Morgan,

There is so much to say and so much evidence available to respond to Mr. Farnsworth's allegations, but this simply does not seem the place. A tit-for-tat back and forth could go on forever. It is difficult not to respond to Mr. Farnsworth's remarks.

However, unless invited by the Court, I will not respond further, however, if the Court intends to consider these continuing emails that restarted today, I would like to be advised so that I may respond formally.

Respectfully,

Kirk Moorhead

**J. KIRKMAN MOORHEAD**

2203 N. Main St.  
Anderson, SC 29621  
Main: 864-225-9155  
Fax: 864-225-9151

---

**From:** D Farnsworth <Dan@farnsworthlawoffices.com>**Sent:** Wednesday, August 09, 2023 4:35 PM**To:** Kirk Moorhead <kirk@mllawyers.com>**Cc:** gmorgansc@sccourts.org**Subject:** Re: Cox v. DiMaggio - Plaintiff's reply to Defendant's Affidavit

Exhausting is an understatement, my friend.

The rules provide for the correction of clerical errors and excusable neglect.

And the interests of justice, as well as case law you, yourself, have cited, allow exceptions to such rules when specific, unique circumstances arise, and when a party is actively avoiding the authority and power of our Courts

Your client is not the victim here.

He instigated this incident and struck and choked my client, who never once swung at him.

If not for Mr Cox's brother coming to his aid, he may likely have been choked to death.

Mr DiMaggio received timely, adequate notice of this lawsuit, as well as a number of subsequent notices out of an abundance of caution.

Your client should be required to answer in a Court of Law for his wrongful acts and damages he has intentionally caused. Hiding behind lies and a watered down version of the circumstances surrounding service, flies in the face of what our Courts are designed to do.

-Daniel J Farnsworth Jr

On Wed, Aug 9, 2023 at 3:48 PM Kirk Moorhead <[kirk@mllawyers.com](mailto:kirk@mllawyers.com)> wrote:

This is exhausting.



There was no service pursuant to the Rules, and there was significant delay that was interposed by the Plaintiff both by simply not attempting to serve the Summons and Complaint for 91 days, then making a series of errors thereafter that exhausted any further hope of timely service. Those choices and errors are not those of the Defendant.

The Defendant is entitled to dismissal.

## J. KIRKMAN MOORHEAD



2203 N. Main St.  
Anderson, SC 29621  
Main: 864-225-9155  
Fax: 864-225-9151

---

**From:** D Farnsworth <[Dan@farnsworthlawoffices.com](mailto:Dan@farnsworthlawoffices.com)>  
**Sent:** Wednesday, August 09, 2023 1:39 PM  
**To:** [gmorgansc@sccourts.org](mailto:gmorgansc@sccourts.org); Kirk Moorhead <[kirk@mllawyers.com](mailto:kirk@mllawyers.com)>  
**Subject:** Re: Cox v. DiMaggio - Plaintiff's reply to Defendant's Affidavit

Lastly, Judge Morgan,

Dimaggio would have certainly been advised by former attorney McDaniel, and shared with Dimaggio, the pleadings received after Mr. Evatt's first phone call to Defendant the day before, and pursuant to Dimaggio's instructions (which are confirmed in the recording provided by Mr. Moorhead) to send the referenced papers to Attorney McDaniel.

And although the subsequent publication that was initially put in the newspaper, pursuant to the Court's Order of Service by Publication, mistakenly was not the typical Summons that is usually published, what was published actually provided more detailed notice of the pending civil action and Plaintiff's attempts to serve the Defendant.

Considering the initial publication provided adequate notice of a pending action, and the efforts of Plaintiff to serve process, along with Plaintiff's subsequent re-publication of the Summons for three more consecutive weeks (a total of six published weeks of notice), and the medical and clerical issues described previously, the totality of circumstances clearly display good faith attempts to prevail against efforts to avoid service by this defendant.

Plaintiff submits that it is in the interest of justice and fairness to find service sufficient in this case, and require

Defendant to make a timely response to these pleadings, so this this matter may be resolved on its merits.

Thank you.

Daniel J Farnsworth Jr

Counsel for Plaintiff

On Wed, Aug 9, 2023 at 12:53 PM Dan Farnsworth <[Dan@farnsworthlawoffices.com](mailto:Dan@farnsworthlawoffices.com)> wrote:

Judge Morgan,

By way of brief reply to Defendant Dimaggio's Affidavit and correspondence presented by his counsel as to the service issue, his own support he relies on and submits to the Court directly contradicts his previously argued and stated version of events.

Dimaggio, as his counsel argued in Court, states in his affidavit that he claims Mr Evatt called and told him the papers he had were concerning a victim's fund, regarding the prior criminal charges involving Mr. Cox.

Not only was the criminal case disposed of almost three years before this civil suit was filed and service attempts began (which raises the profound likelihood that no contact was made with Dimaggio concerning the former criminal case as he claims,

BUT the call recording submitted by defense counsel of Mr Evatt's message left from his second (2nd) phone phone call to DiMaggio when attempting to serve him- sets out and confirms that Evatt had called DiMaggio the day before, that DiMaggio had instructed him to forward the legal papers to his attorney, AND that these papers were not about a criminal matter.

Again, Mr. DiMaggio is clearly being untruthful with the Court and his attorney. Plaintiff has shown multiple attempts to serve Mr Dimaggio - two calls from Mr Evatt (Sept 1st and 2nd), Dimaggio hanging up on Evatt during the first call, and a voice mail left on the 2nd call, process servers' travel to two known addresses of Dimaggio, attempted service at DiMaggio's residence where process servers reported hearing signs of an occupant inside and not answering the door, process servers' interviews with multiple neighbors confirming Dimaggio's residence, and diligent efforts, although not without some mistakes, to have service by publication accomplished timely.

Also, concerning to Plaintiff is Defense counsel's first two arguments at the outset of the parties Motion hearing on this issue. Typically beginning with our strongest points, counsel sets out on rather thin ice, his primary two complaints- that Plaintiffs counsel waited until the last day of the Statute of Limitations to file this lawsuit, and that this would have given Defendant very limited time (one day) to respond with a counterclaim.

As pointed out by Plaintiff's counsel, when one files within the required time limits is of no consequence or unfairness to the named opposing party. Further for the Court's information, Mr Cox had consulted several attorneys after this incident while his three years to file suit was running. Mr. Cox had just recently began discussions with Mr Farnsworth about possible lawsuits in this incident, and confirmed with Mr Farnsworth on the actual last day of our filing period that he wished to have Mr Farnsworth go forward with this action against Dimaggio. Mr Farnsworth then immediately spent over five (5) hours on the afternoon May 31, 2022, drafting, revising and filing the lawsuit with the Court. So clearly, there was no neglect on the part of Plaintiffs counsel that

Mr. Moorhead has argued.

There is no prejudice to the Defendant with the relief Plaintiff seeks herein, acknowledging valid service of process in this case. Other than having to answer for the serious and damaging wrongs he caused, Defendant would have plenty of time to respond to this lawsuit- the same thirty (30) days any defendant would have when answering a Summons and Complaint.

Again, a defendant to a civil action should not be rewarded for his attempts to avoid proper legal service, and earnest attempts at the same, in the interests of justice, should be acknowledged. Any rule to the contrary, without fair, specific exceptions, would encourage bad faith avoidance of disputes being adjudicated on the merits, and reward tortfeasors not only for their wrongs committed, but for their bad faith maneuvers to avoid the power and authority of our Courts.

Rule 60 of the SC Rules of Civil Procedure provides a fair and well conceived remedy for any technical or clerical errors, and excusable neglect, which have been clearly, and i believe convincingly, explained by the Plaintiff, including his hospitalization for a severe spinal impingement issue and resulting surgery, and Court approved protection during the months in question on this issue.

Again, we appreciate the Court's close consideration of the parties arguments and submissions, and will await the Court's ruling on this matter.

Respectfully Submitted,

Daniel J Farnsworth Jr

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Daniel J. Farnsworth, Jr.  
PETTUS // FARNSWORTH, LLC

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WRONGFUL DEATH and INJURY LAW

NURSING HOME ABUSE & NEGLECT

CRIMINAL LAW and  
POLICE MISCONDUCT

EMPLOYMENT and BUSINESS LAW

---

South Carolina office:  
[211 Pettigru Street](#)  
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[201 King Street](#)  
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Daniel J. Farnsworth, Jr.  
PETTUS // FARNSWORTH, LLC

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[434.736.8171](#)

[www.FarnsworthLawOffices.com](http://www.FarnsworthLawOffices.com)

VOICEMAIL FROM STEVEN EVATT  
ATTACHED VIA THUMB DRIVE  
PRODUCED BY LEGAL EAGLE



## Legal Advertising

**Name:** FARNSWORTH LAW OFFICES LLC

**Address:** 414 PETTIGRU ST STE A

GREENVILLE, SC, 2960129601

**Ad No:** 0005465079

**Class:** Legal Notices

**Rate:** Legal Rate

**Publish Dates:**

Thursday, October 27, 2022

Thursday, November 3, 2022

**Lines:**

34.00

I, Anna Russell, being the Legal Advertising Agent for The Greenville News, do hereby testify that the attached legal ad was published on 37 lines for 2 consecutive weeks, as set forth above, in the Greenville News beginning on 10/27/2022 12:00:00AM and ending on 11/3/2022 12:00:00AM

Anna Russell  
Legal Advertising Agent

TERESA T. EASLEY  
Notary Public, State of South Carolina  
My Commission Expires 9/23/2025

The Greenville News Media Group 32 E. Broad Street Greenville, SC 29601



STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS  
Ronald Carl Cox, III, Plaintiff

v.  
Michael John DiMaggio, Defendant  
C.A. NO: 2022-CP-23-02830

ORDER FOR PUBLICATION

Having read the Petition for Publication, submitted by the Plaintiff, that this is a civil action, filed pursuant to S.C. Code 63-15-210, and it is appearing that the Defendant, Michael John DiMaggio, cannot be located by the Plaintiff after due diligence, (see attached Affidavits of Lauren Lipscombe and Steve Evett), it is ordered that the Defendant, Michael John DiMaggio, shall be served notice of this action by publication pursuant to South Carolina Code 15-9-710 (1976), as amended. The court finds, based on Plaintiffs Petition, The Greenville News, in Greenville, South Carolina is a newspaper of general circulation within Greenville, South Carolina most likely to give the Defendant, Michael John DiMaggio, notice of these proceedings.

IT THEREFORE ORDERED that service in this matter be made on the Defendant, Michael John DiMaggio, by publication of Summons and Notice in The Greenville News, a newspaper of general circulation within Greenville, South Carolina once a week for three (3) consecutive weeks and that service of the Summons by mail be waived.

AND IT IS SO ORDERED.

## Legal Advertising

**Name:** FARNSWORTH LAW OFFICES LLC

**Address:** 414 PETTIGRU ST STE A

GREENVILLE, SC, 2960129601

**Ad No:** 0005482819

**Class:** Legal Notices

**Rate:** Legal Rate

**Publish Dates:**

Thursday, November 10, 2022

**Lines:**

38.00

I, Anna Russell, being the Legal Advertising Agent for The Greenville News, do hereby testify that the attached legal ad was published on 41 lines for 1 consecutive weeks, as set forth above, in the Greenville News beginning on 11/10/2022 12:00:00AM and ending on 11/10/2022 12:00:00AM



Anna Russell  
Legal Advertising Agent



TERESA T. EASLEY  
Notary Public, State of South Carolina  
My Commission Expires 9/23/2025

The Greenville News Media Group 32 E. Broad Street Greenville, SC 29601

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS  
Ronald Carl Cox, III, Plaintiff

v.  
Michael John DiMaggio, Defendant  
C.A. NO: 2022-CP-23-02830

ORDER FOR PUBLICATION

Having read the Petition for Publication, submitted by the Plaintiff, that this is a civil action, filed pursuant to S.C. Code 63-15-210, and it is appearing that the Defendant, Michael John DiMaggio, cannot be located by the Plaintiff after due diligence, (see attached Affidavits of Lauren Lipscombe and Steve Evett), it is ordered that the Defendant, Michael John DiMaggio, shall be served notice of this action by publication pursuant to South Carolina Code 15-9-710 (1976), as amended. The court finds, based on Plaintiffs Petition, The Greenville News, in Greenville, South Carolina is a newspaper of general circulation within Greenville, South Carolina most likely to give the Defendant, Michael John DiMaggio, notice of these proceedings.

IT THEREFORE ORDERED that service in this matter be made on the Defendant, Michael John DiMaggio, by publication of Summons and Notice in The Greenville News, a newspaper of general circulation within Greenville, South Carolina once a week for three (3) consecutive weeks and that service of the Summons by mail be waived.

Respond to his complaint to the office of Mr. Daniel J. Farnsworth, Jr. 211 Pettigru St. Greenville, SC 29601 Telephone (864)-250-9119 Facsimile (864)-250-9120  
AND IT IS SO ORDERED.





## Moorhead LeFevre, PA

August 2, 2023

Honorable G. D. Morgan, Jr.  
305 East North Street  
Greenville, South Carolina 29601

RE: Cox v. DiMaggio  
Civil Action Number 2022-CP-23-02830

Dear Judge Morgan,

As you know I represent Michael Dimaggio in the above referenced matter.

Last week, Mr. Farnsworth, attorney for the Plaintiff, submitted a number of materials in the days after the hearing and you kindly allowed me time to respond.

The Plaintiff argues that (1) he was led to believe that service was being handled by his staff; (2) "that a specific instruction by a party to deliver a Summons and Complaint to someone else, including his counsel, when then delivered, should be considered satisfactory service"; (3) that publication of the incorrect document, when done in good faith, should constitute notice to the Defendant and in fact gives the Defendant greater insight into the civil action against him; (4) that mistakes were made, but were made in good faith and constitute excusable neglect pursuant to Rule 60(b)(1) (dealing with relief from judgments); (5) that he believes the Defendant is not being truthful in his representations that he was unaware of a civil summons and complaint when contacted by Mr. Evatt and in hanging up on Mr. Evatt during a second call.

What is never argued is that personal or substitute service of the Defendant was obtained within the 120 days after the filing of the Summons and Complaint and after the Statue of Limitations had run. In order for the Court to conclude that service was sufficient, the Court would have to conclude (1) the service on an attorney who declined authorization to accept service is, in fact, good service because the Defendant disputedly told a process server to send it to his attorney; or (2) that the deadline for service of process should be equitably tolled due to the Defendant's attempts to evade service. Tolling would be required for the attempts made by publication as in every date of publication, even the erroneous ones, occurred after after the 120 day period allowed for service pursuant to S.C. Code Ann. §15-3-20 and SCRCivP 3(a).

## GENERAL OBJECTION

Mr. Farnsworth's affidavit of July 27, 2023, is almost entirely based upon hearsay. To the extent that those hearsay elements are utilized as evidence to contest the Defendant's Motion to Dismiss, I object to the same. Mr. Evatt and Ms. Lipscomb, the employees of Mr. Farnsworth who worked with him in this matter, timely appeared the hearing on July 24<sup>th</sup> and neither have been shown to be unavailable. Any affidavit's pertaining to their personal knowledge should come directly from them.

## ACCEPTANCE OF SERVICE BY ATTORNEY

There is no evidence that Attorney Austin McDaniel was authorized to accept service for the Defendant. To the contrary, the evidence is that Mr. Dimaggio believed that Mr. Evatt had contacted him about a matter involving the victim's compensation fund, which is a matter that Mr. McDaniel may have handled.

In his affidavit of July 27, 2023, Mr. Farnsworth, through hearsay, advises that Steve Evatt called the Defendant and explained that he had a Summons and Complaint for delivery to him. The affidavit of Michael Dimaggio advises that Mr. Evatt represented he was with the victims' fund. Per the affidavit, Mr. Dimaggio relates that he had received funds from the South Carolina Victims's Compensation Fund for the payment of medical bills he incurred after having been rendered unconscious by a kick to his face and a stomp with the boot heel of the Plaintiff's brother. The Plaintiff and his brother were caused to reimburse the South Carolina Victim's Compensation Fund as a condition of dismissing felony charges against them and as such were well aware of Mr. Dimaggio's involvement with the same. Mr. Dimaggio denies that Mr. Evatt ever explained that he had a civil summons and complaint to serve upon him, therefore he could not have been avoiding service of which he was unaware. Please also note that Mr. Evatt relates in his first person affidavit that he advised the Defendant that he had "legal papers" for him and makes no mention of a Summons and Complaint.

Mr. Dimaggio is further providing a recording of a voicemail received on his telephone from Steve Evatt, where Mr. Evatt states, verbatim,

*"Yes, Mr. Dimaggio, this is Steve, we spoke yesterday. Uh, you, uh, you gave me your attorney's information however your attorney does not, or he says he is not your attorney, he doesn't rep you, represent you in any matter. Uh, I need you to call me back as soon as possible or I'll just, ah, have to go up and talk to your, your, your employer or something, so, um I'd like to get this taken care of. This has nothing to do with, um, with uh, criminal charges. So, thank you."*

This voicemail establishes that Evatt was promptly notified that Attorney McDaniel could not accept service. Significantly, Evatt feels it necessary to advise that "this has nothing to do with...criminal charges." A logical reason for him to explain this is that Evatt understood that Dimaggio had reason to believe that Evatt's previous call concerned criminal matters. Coupled with Dimaggio's prior involvement with the SC Victim's Compensation Fund, this lends further credence to Dimaggio's representation in his affidavit that he believed that the call from Evatt involved a criminal matter and that Dimaggio was therefore NOT ON NOTICE OF A CIVIL COMPLAINT AGAINST HIM. Given that this series of event occurred September 1<sup>st</sup> and 2d, as established by the

emailing between Steve Evatt and Austin McDaniel and provided by Mr. Farnsworth, one is led to the conclusion that Dimaggio did not refer Evatt to McDaniel because McDaniel was authorized to accept service, but because Dimaggio believed that Evatt's contact with him concerned a criminal matter.

"No other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service" SCRCivP 4(j). No such writing was delivered or alleged to have been delivered in this case.

In the absence of acceptance by Attorney McDaniel, a designation by the Defendant that McDaniel is his attorney for service of process, which is denied to have occurred, is insufficient to constitute service in this case.

### EQUITABLE TOLLING

In order for Service by Publication to be effective in this case, the Court will have to find that there is a basis to extend the 120 day deadline for service established by S.C. Code Ann. §15-3-20 and SCRCivP 3(a) as every date of publication in this case, even the erroneous ones, occurred after 120 days from filing.

### **§ 15-3-20. General rule as to time for commencement**

(A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.

### **RULE 3. COMMENCEMENT OF ACTION**

(a) Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if:

(1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or

(2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing.

Cases in South Carolina have addressed equitable tolling of the Statute of Limitations during the 120 period set forth by the above Statute and Rule. In those cases, the Court has analyzed whether to extend the Statute of Limitations for the time period when the Plaintiff may have been prevented from serving the Defendant.



In *Hooper v Ebenezer Sr. Services*, 687 S.E.2d 29, 386 S.C. 108 (S.C. 2009), the Supreme Court extended the Statute of Limitations where the Defendant was unable to have been served for until 127 days after filing. Hooper is distinguishable from this case because the Defendant there was a nursing facility that had sold and changed names. The Defendant's registered agent for service had moved without a forwarding address and when a residential address for the registered agent was located, the agent had divorced his wife and moved away and his location was unknown. The Plaintiff had made continued attempts to serve the agent over the course of the 120 days and did not fail to serve the Defendant due to their own errors or delay, but diligently and competently attempted service through process servers and two sheriff's offices. In the Hooper case, the Court noted that the Defendant had failed to comply with State statutes that required an up-to-date Registered Agent for Service. Even then, the Court noted that, "under the unique circumstances of this case, we conclude it is appropriate to equitably toll the statute of limitations for the time Hooper spent in pursuit of Ebenezer's nonexistent agent."

Other cases have further set out guidelines for equitable tolling.

"[A]ny invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result. *Pelzer v. State*, 662 S.E.2d 618, 378 S.C. 516 (S.C. App. 2008).

In this case, the Plaintiff made a single attempt to serve the Defendant at an address that they were able to verify. The more obvious reasons that they failed to obtain service resulted from their own acts and omissions in attempting (or delaying to attempt) service.

First and foremost, the Plaintiff delayed filing suit until May 31, 2023 the day before the running of the Statute of limitations. The Defendant believes that this was intended to be geared toward protecting the Plaintiff's brother from being sued. The Plaintiff's brother, in the course of events that gave rise to this Plaintiff's action, was filmed kicking the Defendant in the face rendering him unconscious, then stomping the unconscious Defendant in the head with his boot heel. Whatever the reason, the Plaintiff elected to wait until the Statute of limitations was expiring to file suit. This in and of itself, placed the Plaintiff in a position where careful attention was required to ensure the Plaintiff's rights would be protected.

However, in direct contrast to careful attention, the Plaintiff inexplicably has produced no evidence that any attempt to make service of the Summons and Complaint until the 91<sup>st</sup> day after filing suit.

When the attempts began, the employee who performed the skip-trace failed to

provide the process servers with the correct address, even though It appears that he was in possession of the same.

Then, the process server served an attorney who did not have authority to accept service with the Summons via email. No Complaint was served. As previously discussed, the attorney promptly notified the process server that he could not accept service.

On September 8, 2023 an attempt to serve the Defendant at a verified residential address failed. However, despite verifying the address on that day through neighbors and the neighbors advising the process server the next day that groceries had been delivered to the residence, no further attempts were made to serve the Defendant at the residence.

Instead, the Plaintiff sought to serve the Defendant through publication. On September 9, 2023 a Petition for publication was filed that failed to provide an affidavit testifying that service of the summons could not be made after due diligence was attached as required by S.C. Code Ann. §15-9-710. In correcting that Petition, on September 30, 2023 a new petition was filed that included an affidavit. Significantly, however, this corrected Petition was filed AFTER the 120 had expired. Also, in that September 30, 2023 Petition, Mr. Farnsworth represented that “because the current place of residence of the Defendant, Michael John Dimaggio cannot be ascertained after the exercise of reasonable diligence.” This was simply not the case.

By failing to file a Petition for Publicatin that complied with statute, the Plaintiff’s lost 21 days.

The Order for publication was granted October 6, 2023. However, it was then an additional 21 days before a document was first published. And, it was the incorrect document. Ultimately, the Plaintiff finally arranged to publish the Summons as required by Statute, but it was not until December 27, 2022 that the first publication was done and it was January 10, 2023 when proper publication was completed.

The series of errors beginning with the August 31 service attempts on incorrect addresses when a correct address had been obtained, cost the Plaintiff 132 days until service by publication was complete. That was on top of 90 days od delay in never attempting service. Under no circumstance could this be considered reasonable diligence.

#### AFFIDAVIT OF FARNSWORTH

The affidavit of Mr. Farnsworth is replete with legal nonsense and inconsistencies with other information provided to the Court.

- Mr. Farnsworth, through hearsay, advises that Steve Evatt called the Defendant and explained that he had a Summons and Complaint for delivery to him. Mr. Evatt relates in his first person affidavit that he advised the Defendant that he had “legal papers” for him.
- Mr. Farnsworth, through hearsay, advises that Mr Evatt called Mr. Dimaggio a second

time that Mr. Dimaggio “ended that call, hanging up on Mr. Evatt.” Mr. Dimaggio’s denies receiving a second call an hanging up, but acknowledges receiving a voicemail message where Steve Evatt advises that “ this has nothing to do with, um, with uh, criminal charges.” Mr. Evatt’s first person affidavit notes that after the call when he advised the Defendant that he had “legal papers” for him, “Mr. Dimaggio has not responded to any other calls.” Contrary to the representation by Mr. Farnsworth that there was a second call by Evatt to Dimaggio where he hung up. There was no second call where Mr. Dimaggio hung up on Mr. Evatt. To the extent that Mr. Farnsworth suggests that Mr. Dimaggio was *avoiding service of process* by hanging up on calls, that isn’t true. In addition, in Mr. Farnsworth’s first Petition for service by Publication, in Paragraph C, he notes that “[A}fter the initial phone call, all other attempts to contact the Defendant by phone resulted in no answer.” We believe that this establishes there was no second telephone call between Evatt and the Defendant.

- Mr Farnsworth notes that email service of the Summons and Complaint on Mr. McDaniel, the Defendant’s criminal lawyer is “proper, since Defendant Dimaggio instructed Mr Evatt to send process to Attorney McDaniel. Mr. Farnsworth presented the email exchange between Steve Evatt and Mr. McDaniel. McDaniel advises “I do not represent Mr. Dimaggio on the attached civil action and therefore cannot accept service on his behalf.” On the face of the email and, more importantly, the Certificate of Service pertaining to Mr. McDaniel, Evatt swears that the Summons, without mention of the complaint, was served by email on Mr. McDaniel. The sworn Certificate of Service fails on its face as, in order to commence a civil action, the Summons AND Complaint must be served.
- Mr. Farnsworth notes that he asked Mr. Evatt and Ms. Lipscomb to “again attempt personal service” at The Defendant’s residence. He relates that there was a single attempt on September 8, 2022. to serve the Defendant at his correct address and that the address was confirmed by neighbors and that Dimaggio received grocery deliveries there. Mr. Evatt’s affidavit further relates that neighbors contacted him the next day (September 9, 2022) and advise that groceries had been delivered to the residence of the Defendant. There is no representation by Mr. Farnsworth or Mr. Evatt, despite confirming the address of the Defendant, that any further attempt were made to serve him there after the single attempt on September 8, 2022.
- Mr. Farnsworth relates that he concluded because of the Defendant “hanging up on a call” (which Mr. Evatt never says anything about in his affidavit) and refusing to answer their knock at his door on a single attempt, that the Defendant is attempting to evade service. He related that he “then instructed Evatt and Lipscomb to seek an Order from the Court allowing service by publication.
- Mr. Farnsworth later in the affidavit suggests that the Defendant attempted to evade service by publication by hiring a lawyer. Given that there were no filings opposing the same, I am not sure how the Defendant attempted to avoid service by publication.
- Mr. Farnsworth relates that he instructed Evatt and Lipscomb to attempt service by



publication. In that first attempt, on September 9, 2022, Mr. Farnsworth failed to include a supporting affidavit testifying that service of the summons could not be made after due diligence was attached as required by S.C. Code Ann. §15-3-20.

- On September 30, 2022, a second Petition for Publication was filed, this time including a supporting affidavit signed by Mr. Evatt. In that Petition, signed by Mr. Farnsworth, he asks the Court, in Paragraph 5, “[t]hat service of the Summons by mail be waived because the current place of residence of the Defendant, Michael John Dimaggio cannot be ascertained after the exercise of reasonable diligence.” Clearly, the residence of the Defendant was identified by Mr. Farnsworth, but he elected not to attempt further service there, even after verification by the neighbors on September 9, 2022 that the Defendant had just had groceries delivered there.
- The Court granted the Plaintiff’s Petition for Service by Publication on October 6, 2022. Thereafter, the Plaintiff published the “Order for Publication”, not the Summons, as required by law. On January 17, 2023, the Defendant filed his Motion to Dismiss which is the subject of this argument. In that Motion, the Defendant argues that the Plaintiff failed by publishing the “Order for Publication” instead of the Summons. Despite this notice of this shortcoming to the Plaintiff, the Plaintiff filed proof of service by publication of the “Order for Publication on April 25, 2023. To date, the Plaintiff STILL HAS NOT FILED PROOF OF SERVICE OF THE SUMMONS.

### CONCLUSION

The combined failures of the Plaintiff to effect service within the rules, failure to comply with Statutory requirements by error or oversight, and failure to proceed with diligence in serving the Defendant after filing suit at the expiration of the Statute of limitations has compromised the rights of the Plaintiff to pursue a remedy. The plaintiff attempts to direct criticism at the Defendant, however, these issues were not the result of the acts of the Defendant. Even assuming arguendo that the Defendant was attempting to evade service by the Plaintiff, the Defendant cannot be blamed for a 91 day delay in the Plaintiff never attempting service, nor for the some 132 days of delay due to errors in attempting to serve by publication. There simply can be no way to find that the failure of the plaintiff to perfect service in a timely manner lays anywhere else but at the feet of the Plaintiff.

Respectfully Submitted,



J. Kirkman Moorhead

JKM

#### Attachments:

Affidavit of Michael John Dimaggio (initially unsigned - signed copy to follow)  
Audio Clip of Voicemail Message from Evatt to Dimaggio

VOICEMAIL FROM STEVEN EVATT  
ATTACHED VIA THUMB DRIVE  
PRODUCED BY LEGAL EAGLE

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The undersigned certifies that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 7, 2025

s/ Daniel J. Farnsworth, Jr.  
Daniel J. Farnsworth, Jr.  
**PETTUS | FARNSWORTH, LLC**  
South Carolina Bar No. 6922  
Post Office Box 8719 (29604)  
211 Pettigru Street (29601)  
Greenville, South Carolina  
T: (864) 250-9119; F: (864) 250-9120

Attorney for Appellant

**RECEIVED**  
**Jan 06 2025**  
**SC Court of Appeals**