

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JACKSON H. DANIEL, III

DIRECT DIAL NUMBER
843-266-8215

E-MAIL ADDRESS
jdaniel@carlockcopeland.com

FACSIMILE
843-727-2995

40 CALHOUN STREET, SUITE 400
CHARLESTON, SC 29401-3531

TELEPHONE (843) 727-0307

www.carlockcopeland.com

ATLANTA OFFICE
191 Peachtree Street, N.E., Suite 3600
Atlanta, Georgia 30303
(404) 522-8220

REPLY TO CHARLESTON
OFFICE

April 24, 2014

VIA FACSIMILE AND U.S. MAIL-803-734-1839

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

APR 29 2014

SC Court of Appeals

Re: Sun v. Olesya Matyushevsky, Citizens Opposed to Domestic Abuse and
Christine Varg, et al.
Appellate Case No: 2011-204367
Our File No.: 3564-44375

Dear Ms. Kitchings:

We have reviewed Mr. Sun's Corrected Record on Appeal and noticed the Order granting Summary Judgment for Christine Varg is referenced in the Index as pages 20-23, however, the Order is missing from the Corrected Record on Appeal. We have enclosed the Order with the pages numbered as indicated in the Appellant's proposed Record on Appeal. Please let us know if we need to submit the Order bound in fifteen (15) copies or designate it as a proposed supplement to the Record on Appeal.

Best regards,


JACKSON H. DANIEL, III

JHD:sss
Enclosures

cc: Joseph C. Sun, *Pro se*
J. Samuel Scoville, Esq.
Charles J. Baker, III, Esq.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 JOSEPH C. SUN,)
)
 Plaintiff,)
)
 vs.)
)
 OLESYA MATYUSHEVSKY, CITIZENS)
 OPPOSED TO DOMESTIC ABUSE,)
 CHRISTINE VARG and LILING SUN,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2011-CP-07-2546

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APR 29 2014

SC Court of Appeals

**ORDER GRANTING MOTION
 FOR SUMMARY JUDGMENT
 OF CHRISTINE VARG**

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 COURT CLERK OF COURT
 BEAUFORT COUNTY, S.C.

This matter comes before the Court on the Motion for Summary Judgment of Defendant Christine Varg filed June 5, 2012, and the Motion for Continuance of the summary judgment motion filed by the Plaintiff, Joseph Sun, on June 25, 2012. A hearing on these motions took place on July 12, 2012. At the hearing, the Court heard arguments from Plaintiff, who appeared *pro se*, and from Charles J. Baker and Jackson H. Daniel, who appeared as counsel for Varg. In deciding the motions, the Court has fully reviewed and considered the following: the prior Order of this Court filed April 6, 2012; Plaintiff's Amended Complaint; the Affidavits of Liling Sun and Christine Varg submitted with the Motion for Summary Judgment; and the Affidavit of Joseph Sun and other materials submitted by Plaintiff with the Motion for Continuance. For the following reasons, the Court denies the Motion for Continuance and grants the Motion for Summary Judgment.

MOTION FOR CONTINUANCE

Plaintiff has moved to continue the hearing on the Motion for Summary Judgment on the grounds that discovery has not been completed. He asserts that the sworn testimony in the affidavits submitted on Varg's behalf is false, deceptive or incomplete and that he should be allowed to take the depositions of Varg and Liling.

Generally, the party opposing summary judgment should have a full and fair opportunity to conduct discovery before summary judgment is granted. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). “Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is ‘not merely engaged in a fishing expedition.’” *Id.*

Given the prior ruling of this Court, the only issue of material fact is whether Varg participated with Liling in the alleged burglary of the Knowles Island house. The affidavits of Varg and Liling are the only evidence in the record on this issue and establish her lack of participation as an undisputed fact. Plaintiff has not identified what specific discovery he might conduct to show this is not true other than his desire to depose Varg and Liling and cross-examine them. There is no reason, however, to believe that these witnesses will recant their prior sworn testimony upon cross-examination. Moreover, Rule 56 of the South Carolina Rules of Civil Procedure specifically recognizes “supporting affidavits” as a proper basis for summary judgment.

Further, the Court notes that this case is one year old, having been filed on June 15, 2011, and Plaintiff has not pursued discovery to date. He has not served any interrogatories or requests for production and has not noticed any depositions in accordance with Rule 30 of the South Carolina Rules of Civil Procedure. The Court will not delay the case based on Plaintiff’s unsubstantiated hopes that he might find something to dispute the affidavits. Therefore, the Court concludes that, under the particular circumstances of this case, Plaintiff has not demonstrated a likelihood that discovery would uncover additional relevant evidence. As such, consideration of the summary judgment motion is not premature, and the Court denies the Motion for Continuance.

MOTION FOR SUMMARY JUDGMENT

The prior order of this Court dismissed all claims against Defendants Olesya Matyushevsky and Citizens Opposed to Domestic Abuse as well as all claims against Varg except one claim related to her alleged participation in a break-in of the house located at 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina. The Court allowed Plaintiff leave to file an amended complaint against Varg involving this claim, which he did on March 26, 2012.

In his Amended Complaint, Plaintiff alleges that, in September 2010 and at least one time afterwards, his ex-wife, Liling Sun, and Varg committed several burglaries of the Knowles Island house by breaking a rear window, entering the house and stealing several items of personal property, various legal papers, and the hard drive to his computer. Plaintiff seeks the return of the stolen property and damages for injury to the house and to other personal property resulting from the alleged break-in.¹

In support of her Motion for Summary Judgment, Varg has submitted her own affidavit and that of Liling. In her affidavit, Liling admits that, on or about September 16, 2010, she did enter the house and remove certain items, including papers, which she claims belonged to her. Liling states, however, that Varg was not with her. Varg swears in her affidavit that she has never been on the Knowles Island property or inside the house there and that she specifically did not accompany Liling to the house on September 16, 2010.

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that judgment shall be rendered when there is no genuine issue of material fact and the moving party is entitled to a

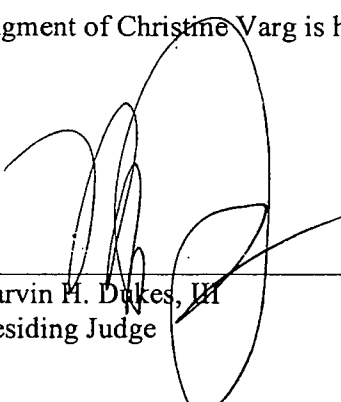
¹ Despite the Court's prior ruling, Plaintiff alleges in the Amended Complaint that attorney Matyushevsky and her paralegal Varg conspired with Liling and advised her to commit the burglaries on the false premise that the house and its contents were marital property. These claims, however, including those against Varg, were dismissed because attorneys are not liable to non-clients for injuries allegedly arising out of the performance of their professional activities for clients. *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986).

judgment as a matter of law. *Smith v. TH Snipes & Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439 (1991). To avoid summary judgment, the non-moving party must submit a scintilla of evidence to demonstrate that there is a genuine issue of material fact. *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). The proper purpose of summary judgment is to dispose of cases which do not require a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Rule 56 speaks to whether there is a genuine issue of material fact. What property was taken and whether the house and allegedly stolen personal property were or were not marital property are not facts material to Plaintiff's remaining claim. The issue is whether Varg committed the alleged burglary with Liling, and the undisputed evidence is that she did not. Plaintiff has not presented even a scintilla of evidence that Varg was a participant in the alleged break-in of the Knowles Island house and has not identified where he might likely obtain such evidence. Therefore, there is no genuine issue of material fact, and Varg is entitled to summary judgment.

NOW, THEREFORE, IT IS ORDERED that Plaintiff's Motion for Continuance is hereby denied and the Motion for Summary Judgment of Christine Varg is hereby granted.

AND IT IS SO ORDERED.

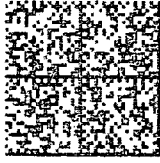


Marvin H. Dukes, III
Presiding Judge

BEAUFORT, SC
July 11, 2012



Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401



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