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SC Court of Appeals

71933

**FORM 1  
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

**APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas**

**James B. Jackson Jr.,  
Master in Equity for Orangeburg County**

Case No. 2011-CP-38-1487  
Case No. 2012-CP-38-0463  
Case No. 2012-CP-38-0462

Lake Marion Resort and Marina

Respondent,

v.

Robert Davis, Sheryl Davis,  
Edward Slotter, Lanette Slotter  
Christina Fant

Appellant.

**NOTICE OF APPEAL**

Robert Davis, Sheryl Davis, Edward Slotter, Lanette Slotter,  
Christina Fant appeals the order of the Honorable James B.  
Jackson Jr., dated August 14, 2013. Appellant received written  
notice of entry of this order August 16, 2013



March 12, 2014

s/Robert & Sheryl Davis  
Robert & Sheryl Davis  
PO Box 577  
Santee, SC 291472  
417-496-6397

s/Edward & Lanette Sloter  
Edward & Lanette Sloter  
PO Box 602  
Santee, SC 29142  
803-974-9087

s/Christina Fant  
Christina Fant  
PO Box 73  
Santee, SC 29142  
803-410-1387



Appellant

Other Counsel of Record:  
Bryant, Fanning, Shuler, LLP  
Eugene Ott  
PO Box 1265  
Orangeburg, SC 29116-1265  
Attorney for Respondent  
803-534-5910

Lake Marion Resort and Marina  
510 Ragtime Trail  
Santee, SC 29142  
Respondent  
803-854-2136

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APR 07 2014

**SC Court of Appeals**

**FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas

James B. Jackson Jr.,  
Master in Equity for Orangeburg County

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Case No. 2011-CP-38-1487  
Case No. 2012-CP-38-0463  
Case No. 2012-CP-38-0462

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Lake Marion Resort & Marina

Respondent,

v.

Robert & Sheryl Davis,  
Edward & Lanette Sloter,  
Christina Fant

Appellant(s).

**PROOF OF SERVICE**

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I Certify that I(we) have served the Notice of Appeal on Lake Marion Resort & Marina by depositing a copy of it in the United States Mail, postage prepaid, on September 12, 2013, addressed to their attorney of record, Mr. Eugene L. Ott, PO Box 1265, Orangeburg, SC 29116-1265.

March 12, 2014

s/Robert & Sheryl Davis  
Robert & Sheryl Davis  
PO Box 577  
Santee, SC 291472  
417-496-6397

s/Edward & Lanette Sloter  
Edward & Lanette Sloter  
PO Box 602  
Santee, SC 29142  
803-974-9087

s/Christina Fant  
Christina Fant  
PO Box 73  
Santee, SC 29142  
803-410-1387



Appellant

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Eugene Ott  
PO Box 1265  
Orangeburg, SC 29116-1265  
Attorney for Respondent  
803-534-5910

Lake Marion Resort and Marina  
510 Ragtime Trail  
Santee, SC 29142  
Respondent  
803-854-2136

COUNTY OF ORANGEBURG )  
LAKE MARION RESORT AND MARINA )

CASE NO. 2011-CP-38-1487  
2012-CP-38-0462  
2012-CP-38-0463

Plaintiff,

vs.

ROBERT DAVIS, SHERYL DAVIS,  
EDWARD D. SLOTER, LANETTE SLOTER  
AND CHRISTINA FANT

Defendants.

ORDER

FILED FOR RECORD  
MINOR B. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

2013 AUG 14 PM 3:40

THIS MATTER came to be heard by me on August 14, 2013. Present at the hearing was Eugene L. Ott, attorney for the Plaintiff, Christina Fant and Edward D. Slotter, Christina Fant informed the Court that the Defendants were no longer represented by Westbrook Wills, III, but attempting to hire Tara D. Shurling who was not present.

ATTEST: TRUE  
*[Signature]*  
CLERK OF COURT  
ORANGEBURG COUNTY, SC

**FINDINGS OF FACT**

All of the parties were properly given notice of the hearings and this Court has jurisdiction over the subject matter of this action and venue is proper.

The Defendants made a motion for a jury trial which was denied and for a continuance so their new attorney could be present which was granted. The Court also set a new trial date for September 13, 2013 at 10 o'clock A. M. and informed all of the parties present that there would be no further continuances in this case. Further the Court found that the Defendant, Christina Fant, was ordered by Judge Dickson's Order filed on July 1, 2013 to pay to the Plaintiff the sum \$ 7,096.84 and I find said Defendant shall pay said sum to Eugene L. Ott, attorney for the Plaintiff, prior to the hearing set for

September 13, 2013 at P. O. Box 1265, Orangeburg, SC 29115 and he shall deposit said amount into his trust account until after the final hearing on September 13, 2013.

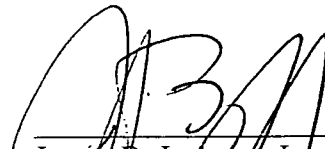
**CONCLUSIONS OF LAW**

I therefore conclude as a matter of law that the Defendants motion for a jury trial is denied and the Defendants Motion for a continuance is granted. The Court also set a new trial date for September 13, 2013 and found that the Defendant, Christina Fant shall pay the sum of 7,096.84 to Eugene L. Ott, attorney for the Plaintiff, prior to the hearing set for September 13, 2013 at P. O. Box 1265, Orangeburg, SC 29115 and he shall deposit said amount into his trust account until after the final hearing on September 13, 2013.

**NOW, THEREFORE IT IS ORDERED that:**

The motion for a jury trial is denied, the motion for a continuance is granted, the trial date is set for September 13, 2013 at 10 o'clock A. M. and the Defendant, Christina Fant, shall pay the sum of 7,096.84 to Eugene L. Ott, attorney for the Plaintiff, prior to the hearing set for September 13, 2013 at P. O. Box 1265, Orangeburg, SC 29115 and he shall deposit said amount into his trust account until after the final hearing on September 13, 2013.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
James B. Jackson, Jr.  
Master in Equity for  
Orangeburg County

Orangeburg, South Carolina  
August 14, 2013

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RULE 38. RIGHT TO A JURY TRIAL; DEMAND

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) DEMAND. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with [Rule 5\(d\)](#).

(c) SPECIFYING ISSUES. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) WAIVER; WITHDRAWAL. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(e) ADMIRALTY AND MARITIME CLAIMS. These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under [Rule 9\(h\)](#).

NOTES

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

This rule provides for the preservation of the constitutional right of trial by jury as directed in the enabling act (act of June 19, 1934, 48 Stat. 1064, U.S.C., Title 28, §723c [see 2072]), and it and the next rule make definite provision for claim and waiver of jury trial, following the method used in many American states and in England and the British Dominions. Thus the claim must be made at once on initial pleading or appearance under Ill.Rev.Stat. (1937) ch. 110, §188; 6 Tenn.Code Ann. (Williams, 1934) §8734; compare Wyo.Rev.Stat. Ann. (1931) §89–1320 (with answer or reply); within 10 days after the pleadings are completed or the case is at issue under 2 Conn.Gen.Stat. (1930) §5624; Hawaii Rev.Laws (1935) §4101; 2 Mass.Gen.Laws (Ter.Ed. 1932) ch. 231, §60; 3 Mich.Comp.Laws (1929) §14263; Mich.Court Rules Ann. (Searl, 1933) Rule 33 (15 days); England (until 1933) O. 36, r.r. 2 and 6; and Ontario Jud.Act (1927) §57(1) (4 days, or, where prior notice of trial, 2 days from such notice); or at a definite time varying under different codes, from 10 days before notice of trial to 10 days after notice, or, as in many, when the case is called for assignment, Ariz.Rev.Code Ann. (Struckmeyer, 1928) §3802; Calif.Code Civ.Proc. (Deering, 1937) §631, par. 4; Iowa Code (1935) §10724; 4 Nev.Comp.Laws (Hillyer, 1929) §8782; N.M.Stat. Ann. (Courtright, 1929) §105–814; N.Y.C.P.A. (1937) §426, subdivision 5 (applying to New York, Bronx, Richmond, Kings, and Queens Counties); R.I.Pub.Laws (1929), ch. 1327, amending R.I.Gen.Laws (1923) ch. 337,

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Motion Hearing held on Oct. 06, 2011 @ 10:30 AM  
Plaintiff Attorney Eugene S. Ott  
Defendants Attorney Timothy J. Griffith

1st. Motion made requested by Defense attorney  
to Combine Case # 2011-CV-38-1050037  
and Case # 2011-CV-38-10500373 as  
one Case was "Granted" without  
objection from Plaintiff Attorney.

The 2nd Motion by the defense requested that  
the Case be moved to Court of Common  
Pleas because the Counter Claim for  
damages was not within the scope  
of exception to jurisdiction limits  
of Magistrate's Court for dispute  
involving landlord and tenant. The  
action in the Counter-Claims exceed  
Magistrate's jurisdictional limit of \$7,500.00  
"Granted" with objection

(P.A. Ott) 10/06/11

2011 OCT 12 P 1:31

STATE OF SOUTH CAROLINA )

IN THE COURT OF  
Common Pleas

COUNTY OF ORANGEBURG )

civil action

LAKE MARION RESORT )

2 MARINA )

2012-CP-38-00463

plaintiff )

VS )

MOTION FOR  
JURY TRIAL +  
to vacate order

Christina Fark & )

All OCCUPANTS )

defendants )

AT This time, we defendants in this case do hereby ask the Court to grant a jury trial in this case, based upon a clerical error of the case being listed as a non jury case, or possible ATTORNEY error. Paperwork from magistrate court will prove this case was originally requested to be a jury trial case, and do again request this Honorable Court to grant this motion and change court records to show that this case is a jury trial case

respectfully submitted

Chris Faust

PO BOX 73

Santee, SC 29142



South Carolina  
Judicial Department

Site Map

**RULE 38  
JURY TRIAL OF RIGHT**

(a) **Right Preserved.** The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.

(b) **Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(c) **Same: Specification of Issues.** In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) **Waiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

**Note:**

This Rule 38 is substantially the Federal Rule. The last sentence is added to Paragraph 38(a) to preserve the language of Code § 15-23-60. Paragraph 38(e) of the Federal Rule, referring to admiralty and maritime claims, is inapplicable to State practice.

55(A) ENTRY - when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)

5(d) ~~plaintiff~~ filing

Common Pleas  
 Clerk : Winnifa Clark  
 1406 Amelia  
 Orangeburg, SC 29116  
 (803) 533-6219

DUPLICATE

Received From: Fant, Christina  
 P.O. Box 73  
 Santee, SC 29142

Date: 8/14/2013  
 Receipt #: 28001  
 Clerk: c38tdavis

Paying for: Self  
 Transaction Type: Payment

Reference #:

Payment Type: Cash \$25.00

Comment:

Total Paid: \$25.00

Non-Refundable

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2012CP3800462	Lake Marion Resort & Marina VS Christina Fant , defendant, et al	\$25.00	\$25.00	\$0.00



<b>Total Cases:</b>	<b>1</b>	<b>\$25.00</b>	<b>\$25.00</b>	<b>\$0.00</b>
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Common Pleas  
Clerk : Winnifa Clark  
1406 Amelia  
Orangeburg, SC 29116  
(803) 533-6219

DUPLICATE

Received From: CHRISTINA FANT

Date : 8/14/2013

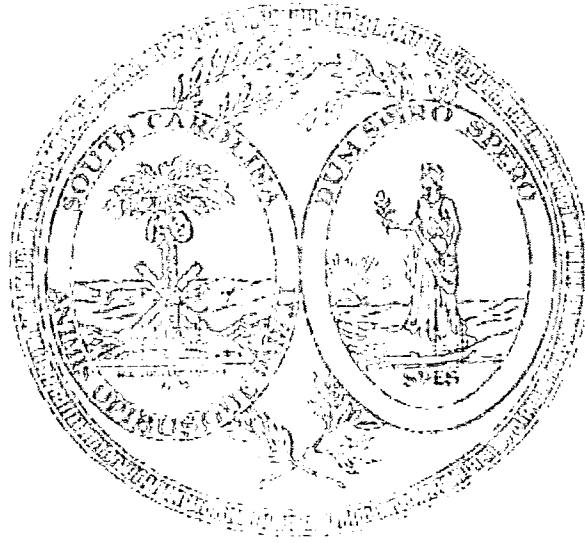
Paying for: CHRISTINA FANT,

RECEIPT # 28002

Clerk: c38tdavis

Payment Type: Cash \$8.00 Reference #

Total Paid 8.00 Comment:



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Federal Rules of Civil Procedure ABOUT SEARCH

RULE 39. TRIAL BY JURY OR BY THE COURT

(a) WHEN A DEMAND IS MADE. When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

- (1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or
- (2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

(b) WHEN NO DEMAND IS MADE. Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) ADVISORY JURY; JURY TRIAL BY CONSENT. In an action not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

NOTES

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

NOTES OF ADVISORY COMMITTEE ON RULES—1937

The provisions for express waiver of jury trial found in U.S.C., Title 28, [former] §773 (Trial of issues of fact; by court) are incorporated in this rule. See rule 38, however, which extends the provisions for waiver of jury. U.S.C., Title 28, [former] §772 (Trial of issues of fact; in equity in patent causes) is unaffected by this rule. When certain of the issues are to be tried by jury and others by the court, the court may determine the sequence in which such issues shall be tried. See *Liberty Oil Co. v. Condon Nat. Bank*, 260 U.S. 235 (1922).

A discretionary power in the courts to send issues of fact to the jury is common in state procedure. Compare Calif.Code Civ.Proc. (Deering, 1937) §592; 1 Colo.Stat. Ann. (1935) Code Civ.Proc., ch. 12, §191; Conn.Gen.Stat. (1930) §5625; 2 Minn.Stat. (Mason, 1927) §9288; 4 Mont.Rev.Codes Ann. (1935) §9327; N.Y.C.P.A. (1937) §430; 2 Ohio Gen.Code Ann. (Page, 1926) §11380; 1 Okla.Stat. Ann. (Harlow, 1931) §351; Utah Rev.Stat. Ann. (1933) §104-23-5; 2 Wash.Rev.Stat. Ann. (Remington, 1932) §315; Wis.Stat. (1935) §270.07. See [former] Equity Rule 23 (Matters Ordinarily Determinable at Law When Arising in Suit in Equity to be Disposed of Therein) and U.S.C., Title 28, [former] §772 (Trial of issues of fact; in equity in patent causes); *Colleton Merc. Mfg. Co. v. Savannah River Lumber Co.*, 280 Fed. 358 (C.C.A.4th, 1922); *Fed. Res. Bk. of San Francisco v. Idaho Grimm Alfalfa Seed Growers' Ass'n*, 8 F.(2d) 922 (C.C.A.9th, 1925), cert. den. 270 U.S. 646 (1926); *Watt v. Starke*, 101 U.S. 247, 25 L.Ed. 826 (1879).

COMMITTEE NOTES ON RULES—2007 AMENDMENT

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The language of Rule 39 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

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[← Rule 38. Right to a Jury Trial: Demand](#)      [up](#)      [Rule 40. Scheduling Cases for Trial](#) >

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**RULE 14**  
**TRIAL BY JURY**

**(a) Number of Jurors.** A jury shall be composed of twelve members, but at any time before verdict, the parties may agree in writing with the approval of the court that the jury shall consist of any number less than twelve or that a valid verdict may be returned by a jury of less than twelve should the court find it necessary to excuse one or more jurors for any just cause after trial commences.

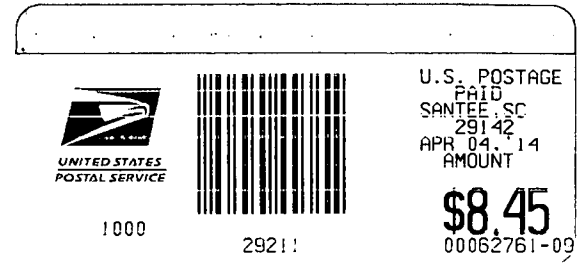
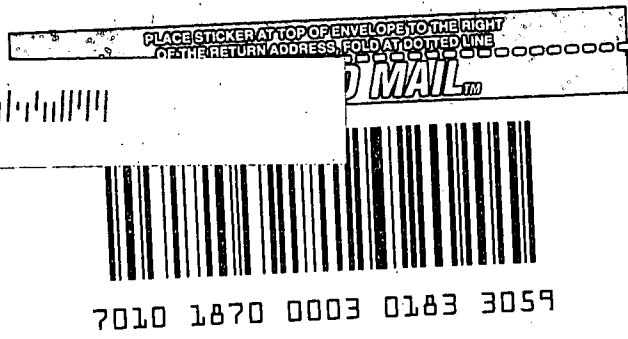
**(b) Waiver.** A defendant may waive his right to a jury trial only with the approval of the solicitor and the trial judge.

**(c) Protection of Right.** In all cases, the trial judge shall ensure that the defendant's rights under the state and federal constitutions to a trial by jury are preserved.

**Note:**

This replaces Circuit Court Rule 46. The language is based on Rule 23, Fed. R. Crim. P.

Christmas Court  
FO  
Santee, SC  
29142



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South CAROLINA Court of Appeals  
Jenny Abbott Kitchings, Clerk  
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Columbia, SC 29211