

2012-212594

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

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JUN - 3 2014

Case No: 2008-CP-40-0009

S.C. Supreme Court

Larry A. Yates.....Petitioner,

v.

The Estate of Alvin Yates.....Respondent.

**PETITION FOR WRIT OF CERTIORARI
APPENDIX VOLUME NO: 2**

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

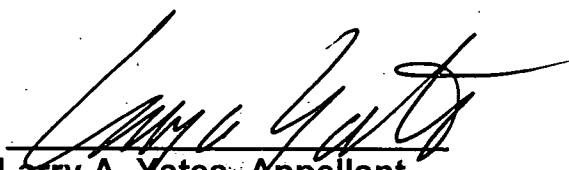
Docket No: 08-CP-40-0009

Larry A. Yates.....Appellant,

v.

The Estate of Alvin Yates.....Respondent.

BRIEF OF APPELLANT



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STATEMENT OF QUESTIONS ON APPEAL

1. DID THE MOTION COURT ERR IN USING THE "SOUND DISCRETION OF THE REVIEWING JUDGE" AS ITS STANDARD OF REVIEW FOR A RULE 60(b)(4) MOTION?
2. DID THE MOTION COURT ERR IN ITS FAILURE TO DETERMINE THAT THE TRIAL COURT'S FINDING FOR THE DEFENDANT (RESPONDENT) VIOLATED THE PLAINTIFF'S (APPELLANT'S) DUE PROCESS RIGHTS TO A FAIR TRIAL, BECAUSE THE RECORD SHOWS THAT ALL THE SUBSTANTIAL EVIDENCE PRESENTED AT TRIAL, SUPPORTED A FINDING FOR THE PLAINTIFF (APPELLANT)?
3. DID THE MOTION COURT ERR IN ITS FAILURE TO DETERMINE THAT THE TRIAL COURT'S ORDER OF JUDGMENT WAS A VOID JUDGMENT BECAUSE IT IS BASED ON CLEARLY ERRONEOUS SUPPOSITIONS THAT ARE NOT FOUND AS PART OF THE TRIAL RECORD?

STATEMENT OF THE CASE

- Jan 3, '08 Appellant (Plaintiff) Yates filed suit (Case No. 08-CP-40-0009) challenging the Estate of Alvin Yates' Respondent (Defendant) claim against his and his deceased cousin's (Alvin Yates) Partnership's property. Complaint (R.pp.186-190)
- Jul 13, '09 A non-jury trial was held in Circuit Court, before Circuit Court Judge, J. Michelle Childs, on July 13, 2009. Trial Transcript (R.pp.52-121)
- Oct 26, '09 Judge Childs issued her October 26, 2009, Order of Judgment, denying the existence of any partnership between Appellant (Plaintiff) Yates' and his cousin, Alvin Yates. Appellant (Plaintiff) Yates was served with a copy of the Order, on November 2, 2009. (R.pp.35-47)
- Nov30, '09 Appellant (Plaintiff) Yates filed his "Motion to Reconsider" and "Memorandum in Support of Plaintiff's Motion to Reconsider" on November 30, 2009.
- Mar10, '10 Judge Childs issued her March 10, 2010, Order denying Appellant (Plaintiff) Yates' Motion for Reconsideration. The Motion was denied on grounds that the Motion was not filed within 10 days after receipt of this Court's October 26, 2009 Order of Judgment.
- Mar15, '10 Appellant (Plaintiff) Yates filed his Notice of Appeal with the SC Court of Appeals, for a review of Judge Childs' October 26, 2009, Order of Judgment, denying the existence of Appellant (Plaintiff) Yates' Partnership with his cousin, Alvin Yates.
- Mar 29, '10 Respondent (Defendant), the Estate of Alvin Yates filed its Motion to Dismiss Appellant (Plaintiff) Yates' Appeal of Judge Childs' October 26, 2009, Order of Judgment, denying the existence of Appellant (Plaintiff) Yates' Partnership with his cousin, Alvin Yates.
- Apr28, '10 The SC Court of Appeals issued its Order "Granting" the Respondent's, March 29, 2010, Motion to Dismiss Appellant (Plaintiff) Yates' Appeal of Judge Childs' October 26, 2009, Order of Judgment. The March 15, 2010 Appeal was Dismissed because the March 15, 2010, filing date was too late to file, because Plaintiff Yates' Motion to

Reconsider was filed late, and therefore did not stay the time for filing Appellant (Plaintiff) Yates' Notice of Appeal.

Dec 15, '11 Appellant (Plaintiff) Yates filed his Rule 60(b) Motion for Relief from Judge Childs' October 26, 2009, Order of Judgment. (R.pp.32-34)

Mar 9, '12 Appellant (Plaintiff) Yates filed his Memorandum in Support of his Rule 60(b) Motion for Relief from Judge Childs' Order of Judgment. Memorandum (R.pp.20-31)

Mar 9, '12 Appellant (Plaintiff) Yates' Rule 60(b) Motion for Relief from Judge Childs' October 26, 2009, Order of Judgment was heard by Circuit Court Judge, Allison Renee Lee on March 9, 2012.

Jun 7, '12 Judge Lee issued her June 7, 2012, Order denying Appellant (Plaintiff) Yates' Motion for Relief from Judge Childs' October 26, 2009 Order of Judgment. Appellant (Plaintiff) Yates was served Judge Lee's June 7, 2012 Order on June 14, 2012. Order (R.pp.14-19)

Jun 22, '12 Appellant (Plaintiff) Yates filed his Motion to Amend Judge Lee's June 7, 2012, Order based on grounds of Hearing Court's error in its standard of review for determining the Hearing Court's finding for denial of Appellant (Plaintiff's) December 15, 2011, Motion to Set-aside Judge Childs' October 26, 2009 Order of Judgment. (R.pp.6-13)

Jun 27, '12 Judge Lee issued her June 27, 2012, Order denying Appellant (Plaintiff) Yates' June 22, 2012, Motion to Amend. Order (R.p.5)

July 26, '12 Appellant (Plaintiff) Yates filed his Notice of Appeal with the SC Court of Appeals on July 26, 2012.

Dec 28, '12 After receipt of transcript of non Jury trial and receipt of two (2) Orders of this Court granting enlargements of time for filing Appellant's Initial Brief and designation of matter, this Appellant herewith files his Initial Brief and designation of matter, on December 28, 2012.

ARGUMENT NO. 1

THE MOTION COURT ERRED IN USING THE "SOUND DISCRETION OF THE REVIEWING JUDGE" AS ITS STANDARD OF REVIEW FOR A RULE 60(b)(4) MOTION.

As properly stated in the "Standard of Review" paragraph of Judge Lee's Motion Court's Order of June 7, 2012, in order for a judgment to be void under Rule 60(b)(4), it must be one that, from its inception, is a complete nullity and is without legal effect. In relevant part, void judgments are judgments rendered by courts which failed to provide proper due process. From Judge Lee's Order of June 7, 2012:

Rule 60(b), SCRPC requires the moving party to show one of the five enumerated reasons before the court may grant relief from an order. Patterson v. McNeill & Associates, Inc., 312 S.C. 471, 472, 441 S.E.2d 328, 329 n.2 (Ct. App. 2005). A Motion for Relief from an Order is appropriate pursuant to Rule 60(b)(4), SCRPC, where a party shows "the judgment is void." Tri-County Ice and Fuel v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). In order for a judgment to be void under Rule 60(b)(4), it must be one that, "from its inception, is a complete nullity and is without legal effect." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct.App. 2002) In relevant part, void judgments are judgments rendered by courts "which failed to provide proper due process" Id. Order (R.p.16.¶.2)

However, Judge Lee was mistaken when she determined that the proper "standard of review in deciding whether to grant or deny a Rule 60(b)(4) motion lies within the sound discretion of the reviewing judge." (R.p.16.¶.2) In her June 7, 2012, Order she inappropriately cited Perry v. Heirs at Law of Gadsden, 357 S.C. 42, case law for a Rule 60(b)(3) Motion as a justification of her standard of review for this Appellant's (Plaintiff's) Rule 60(b)(4) Motion. Order (R.p.16.¶.2) In her June 27, 2012, Order she inappropriately cited Tobias v. Rice, 379 S.C. 357, case

law for a Rule 60(b)(1) Motion as a justification of her standard of review for this Appellant's (Plaintiff's) Rule 60(b)(4) Motion. Order (R.p.5)

Although, some of the five enumerated reasons for the court to grant relief under Rule 60(b), could properly be determined within the sound discretion of the reviewing judge; relief under Rule 60(b)(4) is properly reviewed de novo¹.

Following a bench trial, the reviewing (Motion Court) judge reviews the trial court's legal determinations de novo, and its factual findings for clear error. Furthermore, reviewing court reviews de novo a trial court's ruling upon a Rule 60(b)(4) motion to set-aside a judgment as void, because the question of the validity of a judgment is a legal one. (Lexis 9808 & 7886). Court reviews de novo¹ a ruling on a request for relief under Rule 60(b)(4). Carter v. Fenner, 136 F.3d 1000, 1005 (5th Circuit, 1998) Also, relevant is; Rutherford v. Rutherford, 307 S.C. 199, 414 S.E.2d 157 (1992)

Judge Lee, the motion court judge, was compelled to vacate the October 26, 2009, judgment against the Appellant (Plaintiff), because a de novo review of the trial record would have confirmed the trial judge's failure to consider the "substantial² evidence" Plaintiff's Exhibits (R.pp.122-181) for the Appellant (Plaintiff), was a violation of the Appellant's (Plaintiff's) constitutional right to due process and the right to a fair trial. A judgment taken in violation of a Plaintiff's constitutional rights afforded him by the Fifth and Fourteenth amendments of the U.S. Constitution, is a void judgment. A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it

1. De Novo. The court gives no deference to the lower court's decision and applies the same standard as the district court. Whatley v. CNA Ins. Co., 189 F.3d 1310, 1313 (11th Cir. 1999).

2. Substantial Evidence. Substantial evidence is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971).

should be set aside." J. Moore, Moore's Federal Practice, para. 60.25[2] at 301 (2d ed. 1973). The issue of whether the Plaintiff was denied due process involves a constitutional question of law that Judge Lee should have reviewed, de novo. In re Center Wholesale, Inc., 759 F.2d 1440, 1445 (9th Cir. 1985).

In American Federal Court systems, "de novo" can also refer to a Standard of review for courts of appeal. Sometimes, particularly potent issues are brought before an appeals court, such as a constitutional determination made by a lower court, or summary judgment granted by a lower court. When this sort of issue is on appeal, the court of appeals will review the lower court decision "de novo" or from the beginning. In this process, the panel of judges for the court of appeals will review the lower court's reasoning and fact-finding from the beginning, based in the trial record. This is a high level of scrutiny that is more likely to result in reversal or remand of an issue.

We review the denial of a Rule 60(b)(4) motion de novo. See Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001). We can affirm on any ground supported by the record. See 28 U.S.C. § 2111; Collins v. Seaboard Coastline R.R. Co., 681 F.2d 1333, 1335 (11th Cir. 1982).

In law, the expression trial de novo means a "new trial" by a different tribunal (de novo is a Latin expression meaning "afresh", "anew", "beginning again", hence the literal meaning "new trial"). A trial de novo is usually ordered by an appellate court when the original trial failed to make a determination in a manner dictated by law.

ARGUMENT NO. 2

THE MOTION COURT ERRED IN ITS FAILURE TO DETERMINE THAT THE TRIAL COURT'S FINDING FOR THE RESPONDENT (DEFENDANT) VIOLATED THE APPELLANT'S (PLAINTIFF'S) DUE PROCESS RIGHTS TO A FAIR TRIAL, BECAUSE THE RECORD SHOWS THAT THE SUBSTANTIAL EVIDENCE PRESENTED BY THE APPELLANT (PLAINTIFF) AT TRIAL DEMANDED A FINDING FOR THE APPELLANT (PLAINTIFF).

At trial, Appellant (Plaintiff) Yates gave in-court testimony, offered affidavit testimony exhibits, and introduced document exhibits and case law exhibits into evidence. Trial Exhibits (R.pp.122-181) All of this evidence was left uncontested, in that the Respondent (Defendant) did not offer a defense. Trial Transcript (R.p.114.lines 7-15) (emphasis added)

Without objection by the Respondent (Defendant), the Appellant (Plaintiff) introduced fifteen (15) exhibits into evidence, each exhibit included partnership documents, partnership case law and affidavit testimony by Appellant (Plaintiff) Larry A. Yates. Each exhibit confirmed the existence of a partnership between Larry Yates and Alvin Yates. Trial Exhibits (R.pp.122-181)

Appellant's (Plaintiff's) Exhibit # 1 (R.pp.122-124) was the "Project Partnership Agreement" dated July 5, 2003, and executed by Larry Yates and Alvin Yates, setting forth their agreements regarding the construction of a modular building system home on a lot of land located at 400 Grover Wilson Road in Blythewood, South Carolina.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 1 was as follows: "*I am familiar with the facts and circumstances involving the Partnership*

that existed between partners Larry A. Yates and Alvin Yates and with the financing and construction of the partnership property located at 400 Grover Wilson Road, in Blythewood, South Carolina, a picture (R.p.177) of which is shown on the cover sheet of this document, as it was in 2007), and I hereby certify that the copy of the "Project Partnership³ Agreement" under which the home was constructed, as evidenced herein as Exhibit 1, is a true copy of the Partnership Agreement that was entered into on July 5, 2003, between Alvin Yates and Larry A. Yates.

Some of the specifics of this Partnership⁴ Agreement included:

1. Plans to purchase a 4 Br / 3-1/2 Bath modular building systems home from Signature Building Systems, Inc. located in St. George, SC.

2. Plans to construct the home on a permanent brick foundation on a lot of land located in N.E. Richland County at 400 Grover Wilson Road, in Blythewood, SC.

3. Plans to pay approximately \$79,000 for the pre-fabricated home including delivery for the house and garage packages and dry-in set for the house.

4. Plans for obtaining financing for the purchase of the home and payment of all necessary on-site material, equipment and labor to complete the home for occupancy.

5. Plans for the marketing and sale of the completed home.

6. Plans for partner Larry Yates to keep and report a full and accurate accounting of all project expenditures.

7. Plans for the proceeds of the sale of the property to first be applied to the payment of the partnership debt and lastly to the payment of profits to the partners." Trial Transcript (R.p.65.Ln15-p.66.Ln23)

³ Partnership laws for the State of South Carolina, provide in part that, "[w]here parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, there is a partnership." (Stephens v. Stephens. 50 S.E.2nd 577, 213 S.C. 525)

⁴ Also, "[w]here parties to a contract, by their acts, conduct, or agreement show that they intend to combine their property, labor, skill and experience, or some of such elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade, or venture as a commercial enterprise, and to share, either expressly or by implication, the profits and losses or expenses that may be incurred, such parties are partners." (Moore v. Moore. 599 S.E.2nd 467, 460 S.C. 241) Furthermore, a partnership agreement may be implied and without express intention. One of the most important tests as to the existence of a partnership, is the intention of the parties.

Appellant's (Plaintiff's) Exhibit # 2 (R.pp.125-130) was a "Prime Equity Line of Credit Note" that was signed by Larry Yates and Alvin Yates, for borrowing \$139,100 from Wachovia Bank.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 2 was as follows: "The partners did apply for and receive a "Prime Equity Line of Credit" secured by residential property, belonging to Alvin Yates, located at 612 Ashwood Circle, in West Columbia, South Carolina, in an amount of \$139,100 from Wachovia Bank, for the expressed purpose of purchasing partnership property⁵, that would become 400 Grover Wilson Road home and property. That the Note securing this Prime Equity Line of Credit was executed and signed by both partners, Larry A. Yates and Alvin Yates, on July 21, 2003, as evidenced by Exhibit No. 2, which I hereby certify to be a true copy of the "Wachovia Bank, National Association's Prime Equity Line of Credit Agreement & Disclosure Statement." Trial Transcript (R.p.67.Ln23-p.68.Ln11)

Appellant's (Plaintiff's) Exhibit # 3 (R.pp.131-132) was a "Final Invoice" from Signature Building Systems, Inc." in the amount of \$75,762.29 less \$8,000.00 previously paid for a balance due of \$67,762.29 for the purchase of modular building system home.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 3 was as follows: "The partnership did use the partnership funds⁵ secured from Wachovia Bank, for the intended purpose of purchasing partnership property⁵ consisting of a 4BR / 3-1/2 Bath modular building systems home, from Signature Building Systems, Inc, of St. George, South Carolina, as evidenced by Exhibit No. 3, which I hereby certify to be a true copy of the "Final Invoice" dated August 5, 2003, from Signature Building Systems, in the amount of \$75,762.29." Trial Transcript (R.p.69.Ln25-p.70.Ln10)

Appellant's (Plaintiff's) Exhibit # 4 (R.pp.133-134) was a "Official Check" from Wachovia Bank, dated 8/18//03 and made payable to Signature Building

⁵ Property bought with partnership funds, belongs to partnership. (Stephens v. Stephens. (50 S.E.2nd 577, 213 S.C. 525)

Systems, Inc. in the amount of \$67,762.29 and showing remitters as "Larry and Alvin Yates."

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 4 was as follows: "The partnership did use the partnership funds secured from Wachovia Bank, for the payment of Signature Building Systems' "Final Invoice"⁵ by way of a wire transfer advance payment of \$8,000 as a production deposit and by way of a \$67,762.29 Wachovia Bank, Official Check No. 354081369 made payable to Signature Building Systems, Inc., with remitter as Larry and Alvin Yates, as evidenced by Exhibit No. 4, which I hereby certify to be a true copy of Wachovia Bank's Official Check, dated August 18, 2003, in the amount of \$67,762.29. Trial Transcript (R.p.72.Ln7-Ln21)

Appellant's (Plaintiff's) Exhibit # 5 (R.pp.135-137) was a warranted deed, dated October 28, 2003, from D.L Wilson to Alvin Yates⁶, in consideration of \$21,200.00, for the lot of land to be known as 400 Grover Wilson Road, Blythewood, SC.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 5 was as follows: "The partnership did use partnership funds⁵ secured from Wachovia Bank, for the purchase of a parcel of land containing 1.217 acres, from D.L. Wilson, daughter of partner Larry A. Yates, for which the partnership paid \$5,000 for the transfer of the property into partner Alvin Yates' name⁶ in exchange for cash payment of \$5,000 and promise of payment of an additional \$16,200 from the proceeds of the sale of the partnership property, as evidenced by Exhibit No. 5, which I certify to be a true copy of the Title To Real Estate where D.L. Wilson transferred title to 400 Grover Wilson Road Property to Alvin Yates⁶ even though she had not been paid the balance of the \$16,200, which still remains unpaid." Trial Transcript (T.p.73.Lns12-25)

Exhibits # 6 thru 10 were various invoices for construction materials or labor for 400 Grover Wilson Road, Blythewood, SC, which were paid with checks

⁶ Property bought with partnership funds, in name of a single partner, belongs to partnership. (Stephens v. Stephens. (50 S.E.2nd 577, 213 S.C. 525)

drawn on Wachovia Bank from account named, "Alvin Yates & Larry Yates Construction Account."

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 6 (R.pp.138-139) was as follows: *"The partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Clearing of Land for House and Yard" by Robert Hildreth Land Clearing Company, as evidenced by Exhibit No. 6, which I certify to be a true copy of "Service Contract and Invoice" of July 14, 2003 in the amount of \$900.00 and of payment of same by "Al Yates & Larry Yates Construction Account" check No. 0093, dated July 17, 2003, and made payable to Robert Hildreth Land Clearing Company in the amount of \$900.00."* Transcript (R.p.76.Ln4-Ln15)

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 7 (R.pp.1140-142) was as follows: *"The partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of purchasing "Concrete Block Products" as evidenced by Exhibit No. 7, which I certify to be a true copy of "Sales Ticket" of Southeastern Concrete Products, dated July 29, 2003; in the amount of \$642.60 and of "Payment Receipt" of same by "Al Yates & Larry Yates Construction Account" check No. 0098, dated July 28, 2003, and made payable to Southeastern Concrete Products in the amount of \$642.60."* Trial Transcript (R.p.77.Ln20-p.78.Ln5)

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 8 (R.pp.143-146) was as follows: *"The partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of purchasing various other materials for the preparation of brick and block foundation, which included the following; 20.93 tons of stone costing \$329.65 and one load of masonry sand costing \$150.00, from Cripple Creek Corporation with respective payments by way of "Al Yates & Larry Yates Construction Account" checks No. 0099 & 1001; and invoice "Acknowledgement" from Carolina Ceramics for brick & mortar costing \$1,057.77; and Hardaway Concrete Company for pre-mixed concrete costing \$926.10 and paid by "Al Yates & Larry Yates Construction Account" check No. 1027, each of which I certify to be true copies."* Trial Transcript (R.p.78.Ln15-p.79.Ln4)

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 9 (R.pp.147-149) was as follows: "The partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Crane Rental" from White Crane Company for unloading and setting various sections of the pre-fabricated home that the partnership purchased from Signature Building Systems as evidenced by White Crane Company Work Order No. 002034, Revised Invoice #6293 dated August 22, 2003, for an adjusted price of \$900.00; and payment by "Al Yates & Larry Yates Construction Account" check No. 1020, dated August 29, 2003, which I certify to be true copies of the "Work Order", "Revised Invoice" and "Al Yates and Larry Yates Construction Account Check No. 1020"." Trial Transcript (R.p.79.Ln13-p.80.Ln1)

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 10 (R.pp.150-151) was as follows: "The partnership did use partnership funds secured from Wachovia Bank, for the intended purpose of "Vinyl Siding Installation" by Steve McAtee as evidenced by Fax Message from Larry A. Yates, L.A. Yates & Associates accounting for labor amount due and payment thereof by "Al Yates & Larry Yates Construction Account" check No. 1025, dated September 6, 2003, in the amount of \$212.00, which I certify to be true copies of the "Fax Message" & "Check No. 1025"." Trial Transcript (R.p.80.Ln13-Ln23)

Appellant's (Plaintiff's) Exhibit # 11 was an accounting of the expenditures for the "on-site" construction associated with the modular building system home, that was purchased from Signature Building Systems and erected on site of 400 Grover Wilson Road, Blythewood, SC. According to testimony by Larry Yates, this accounting was done by him and shared with Alvin Yates at weekly breakfast meetings, that they had each week.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 11 (R.pp.152-163) was as follows: "As required by Item No. 6 of the Partnership Agreement between Alvin Yates and Larry Yates, partner Larry Yates did keep a full and accurate accounting of all project expenditures as evidenced by Exhibit No. 11 which includes a summary sheet with 25 itemized account numbers and names, and estimates of expected costs and spent-to-date totals as calculated

from lists of individual invoices on the following pages, all of which I hereby certify to be a true accounting of the use of partnership funds for the construction of the partnership property located a 400 Grover Wilson Road, in Blythewood, South Carolina." Trial Transcript (R.p.81.Ln7-Ln20)

Appellant's (Plaintiff's) Exhibit # 12 was an accounting of the expeditors of Alvin Yates' expenses associated with his day to day participation in the construction of the modular building system home.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 12 was as follows: "Partner Alvin Yates did take an active part in the day to day operation of the partnership as evidenced by invoice charges to "Alvin Yates Miscellaneous" under accounting Code No. 24 and individual invoices listed under accounting Code No 24, including expenses for weekly breakfast meetings held at the Lizard's Thicket Restaurants and Dinner meetings held at the Macaroni Grill for the purpose of discussing partnership business and various charges for gas for traveling to and from the partnership job site at 400 Grover Wilson Road in Blythewood, South Carolina which I hereby certify to have been true business expenses charged to the Alvin Yates Miscellaneous Account." Trial Transcript (R.p.82.Ln6-Ln19)

Appellant's (Plaintiff's) Exhibit # 13 was an accounting of reimbursements for personal monies that Alvin Yates had contributed to the "Alvin Yates & Larry Yates Construction Account." This reimbursement was for \$4,566.81 and was paid by "Alvin Yates & Larry Yates Construction Account" check # 1053 on April 29, 2004.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 13 was as follows: "The partnership did use partnership funds secured from Wachovia Bank, for reimbursing partner Alvin Yates for personal money's that he had contributed to the partnership construction account, as evidenced by partner Larry Yates' April 29, 2004 letter of accounting which itemizes various contributions totaling \$4,566.81 and payment of same to Partner Alvin Yates by "Al Yates & Larry Yates Construction Account" check No. 1053., which I certify to be true copies of the

April 29, 2004 "Letter of Accounting" & Al Yates & Larry Yates Construction Account Check No. 1053." Trial Transcript (R.p.84.Ln6-Ln17)

Appellant's (Plaintiff's) Exhibit # 14 was a real estate property appraisal issued by Certified Appraisal Services, Inc., 201 Blythewood Road, Blythewood, SC, who estimated the market value of the property at 400 Grover Wilson Road, Blythewood, SC, to be \$235,000.00, as of July 20, 2004.

Appellant (Plaintiff), Larry Yates' testimony concerning Exhibit # 14 was as follows: "*The partnership did receive an evaluation appraisal of the partnership property, as of July 20, 2004, from "Certified Appraisal Services, Inc." which gave an evaluation of the value for the Partnership's property of the 4 Br / 3-1/2 Ba home and 1.2 acre lot at 400 Grover Wilson Road, Blythewood, SC to be \$235,000.*" Trial Transcript (R.p.85.Ln4-Ln12)

Appellant's (Plaintiff's) Exhibit # 15 was a whole bound book of Appellant's (Plaintiff's) Exhibits # 1 thru #14, including the front cover photograph of the Partnership Property as it appeared on the date of the Bench Trial in Circuit Court before Judge Michelle Childs, on July 13, 2009. Photograph (R.p.177) Appellant's (Plaintiff's) Exhibit # 15 also included affidavit testimony by Larry Yates, as to each one of the Exhibits # 1 thru # 14. Trial Transcript (R.p.85.Ln23-p.86.Ln12)

Upon cross examination of Larry Yates, the witness for the Appellant (Plaintiff), the Respondent's (Defendant's) attorney asked the witness about a mortgage on Alvin Yates's personal residence at 612 Ashwood Circle, West Columbia, SC, that was given to Wachovia Bank and was identified by (entered into evidence as Respondent (Defendant's) Exhibit # 1) Larry Yates as security for the "Prime Equity Line of Credit Note" that was signed by Larry Yates and Alvin Yates, for borrowing \$139,000 from Wachovia Bank.

Mr. Hall also got Larry Yates to identify a "Confession of Judgment" document (entered into evidence as Respondent-Defendant's Exhibit # 2) that he had given to Alvin Yates back in 2001, but Larry Yates testified that the Confession of Judgment was a mutually agreed upon, and non-binding means of protecting the assets of Alvin Yates from a third party judgment against Larry Yates, personally, and therefore did not involve the partnership of July 5, 2003, that existed between Larry Yates and Alvin Yates.

After cross examination, the Appellant (Plaintiff) rested his case. Trial Transcript (R.p.114.Ln3-Ln5).

Respondent (Defendant) did not call any witnesses to testify, did not introduce any evidence or otherwise contradict the testimony nor dispute any of the evidence, that supported the existence of the Partnership between Larry Yates and Alvin Yates, that the Appellant (Plaintiff) had presented before the Court. Trial Transcript (R.p.114.Ln6-Ln15) (emphasis added)

ARGUMENT NO. 3

THE MOTION COURT ERRED IN ITS FAILURE TO DETERMINE THAT THE TRIAL COURT'S OCTOBER 26, 2009, ORDER OF JUDGMENT WAS A VOID JUDGMENT BECAUSE IT IS BASED ON CLEARLY ERRONEOUS SUPPOSITIONS THAT ARE NOT FOUND AS PART OF THE TRIAL RECORD.

The standard of review pursuant to Rule 60(b)(4) is de novo. The motion court judge is compelled to vacate the October 26, 2009 judgment against the Plaintiff, because a de novo review of the trial record will confirm that the trial judge's findings set forth in the October 26, 2009 order of judgment were "clearly erroneous."⁷

⁷Clearly Erroneous. "Review under the clearly erroneous standard is significantly deferential." Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court's findings unless it's left with the "definite and firm conviction that a mistake has been committed." Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982).

There are numerous false statements, opinions and findings of fact that are found in the trial Court's October 26, 2009, Order of Judgment. These entries are not evidence, are not found as part of the trial record, but the Trial Court's Order of Judgment is mostly based on entries that are not evidence contained in the trial record.

There is no evidence in the trial record that would support the Respondent's (Defendant's) case, because the Respondent (Defendant) did not call any witnesses to testify, did not introduce any evidence or otherwise contradict the testimony nor dispute any of the evidence, that supported the existence of the Partnership between Larry Yates and Alvin Yates, that the Appellant (Plaintiff) had presented before the Court. Trial Transcript (R.p.114.Ln6-Ln15) (emphasis added)

Some examples of entries contained in the Trial Court Judge's "Order" that are not found in the trial record, are as follows:

1) There is no evidence in the trial record, that "*Decedent Alvin Yates ('Decedent') died on April 16, 2005.*" Trial Court Order (R.p.36.¶.2)

2) There is no evidence in the trial record, that "*His estate was probated in Lexington County.*" Trial Court Order (R.p.36.¶.2)

3) There is no evidence in the trial record, that "*The probate court determined that the sole asset of Decedent's estate is modular home, located at 400 Grover Wilson Road, Blythewood, South Carolina 29016.*" Trial Court Order (R.p.36.¶.2)

4) There is no evidence in the trial record, that "*Plaintiff first attempted to intervene in the probate proceedings claiming that the 400 Grover Wilson Road property was owned by a partnership entered into by him and the decedent on or about July 3, 2005.*" Trial Court Order (R.p.36.¶.2)

5) There is no evidence in the trial record, that "*The probate judge refused to hear the matter determining that the probate court lacked jurisdiction.*" Trial Court Order (R.p.36.¶.2)

6) There is no evidence in the trial record, that "Probate administration of the Decedent's estate has since closed." Trial Court Order (R.p.37.¶.1)

7) There is no evidence in the trial record, that "Prior to April 12, 2000, Decedent made various loans to Plaintiff on which the Plaintiff defaulted." Trial Court Order (R.p.37.#.1)

8) There is no evidence in the trial record, that an April 12, 2000, "Confession of Judgment" had any relevance with regard to weighing the preponderance of evidence for determining the existence of the July 5, 2003 partnership. Trial Court Order (R.p.37.#2) (Trial Trans.Pg111)

9) There is evidence in the trial record, that "Plaintiff's and Decedent signed a document entitled Project Partnership Agreement and therefore did have a partnership for the purpose of the purchase and construction of a modular systems home from Signature Building Systems, Inc." Trial Court Order (R.p.37.#3) Plaintiff's Exhibits (R.pp.122-181)

10) There is evidence in the trial record, that "Plaintiff and Decedent, as partners in a partnership, obtained an open-end line of credit from Wachovia Bank for purchasing partnership property..." Trial Court Order (R.p.38.#4) Plaintiff's Exhibit # 2 (R.pp.125-130)

11) There is evidence in the trial record, that Plaintiff and "Decedent, as partners in a partnership, purchased a 4BR/ 3-1/2 bath modular building" Trial Court Order (R.p.38.#5) Plaintiff's Exhibit # 3 & 4 (R.pp.131-134)

12) There is evidence in the trial record, that Plaintiff and "Decedent, as partners in a partnership, paid for the modular home...." Trial Court Order (R.p.39.#5) Plaintiff's Exhibit # 4 (R.pp.133-134)

13) There is no evidence in the trial record, that "Decedent died on April 16, 2005. Trial Court Order (R.p.40.#13)

14) There is no evidence in the trial record, that "probate court determined that the property known as 400 Grover Wilson Road is the sole asset of Decedent's estate. Trial Court Order (R.p.40.#14)

15) There is no evidence in the trial record, that "Defendant argues (presented any evidence) that there was never any agreement to create a partnership between the parties, and the Agreement submitted by Plaintiff contains no language creating a partnership between the parties. Moreover,

Defendant claims that Plaintiff made no contribution to the alleged partnership, and thus, the existence of a partnership cannot be implied from the conduct of the parties. Trial Court Order (R.p.40.¶.Law/Analysis)

16) Contrary to the Trial Court Judge finding otherwise, there is evidence in the trial record, that the partners were to share profits and losses. Trial Court Order (R.p.43.¶.1) Trial Transcript (R.p.66.Ln20-Ln23)

These “clearly erroneous⁷” finding contained in the trial court judge’s October 26, 2009 order of judgment are a violation of the Plaintiff’s constitutional right to due process and the right to a fair trial.

If the July 13, 2009, trial would have been a jury trial, rather than a bench trial, the trial court judge would have instructed the jury to reach a verdict, based on a “Preponderance of the Evidence.” The trial court judge would have demonstrated a preponderance of the evidence with a tipping of the “scales of justice” example. With all of the trial evidence weighing on the Appellant’s (Plaintiff’s) side of the proverbial scales of justice, and nary a tiny bit of evidence for the Respondent (Defendant), the jury would have reached a verdict for the Appellant (Plaintiff) in about the time required to write “We Find For The Plaintiff” on the verdict form.

However, instead of weighing all of the evidence, as a bench trial judge should have done, and declaring a judgment that, “The Court Finds For The Plaintiff” as a jury would have done, the trial court judge, surprisingly decided to “Look Through The Entire File And Then We’ll Send You A Written Decision.”

How hard is it for a Circuit Court Judge to decide a 45 minute trial, where the Plaintiff provides the Court with all the evidence, and the Defendant provides the Court with no evidence (Defense did not present a case)?

Instead of deciding the case a trial, as would have been expected of a jury, this trial court judge waited more than three (3) months to issue "A Written Decision." Instead of the written decision being six (6) words, "The Court Finds For The Plaintiff," as it should have been, the trial court judge issued a twelve (12) page Order, (R.pp.35-47) which was effectively a decision of "The Court Finds For The Defendant."

As set forth above, the trial court judge's Order was filled with statements, finding of facts and arguments that are nowhere to be found in the July 13, 2009, trial record. The Order and the decision therein was taken in violation of this Appellant's (Plaintiff's) constitutional rights afforded him by the Fifth and Fourteenth amendments of the U.S. Constitution, and therefore is a void judgment. A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside." J.Moore, Moore's Federal Practice, para. 60.25[2] at 301 (2d ed. 1973). The issue of whether the Plaintiff was denied due process involves a constitutional question of law that this hearing judge reviews de novo. In re Center Wholesale, Inc., 759 F.2d 1440, 1445 (9th Cir. 1985).

CONCLUSION

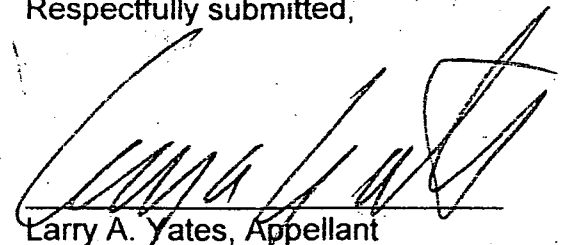
Wherefore, on multiple grounds, (as set forth above) the trial court's order of judgment issued on October 26, 2009, which was taken in violation of a Plaintiff's constitutional rights afforded him by the Fifth and Fourteenth amendments of the U.S. Constitution, is a void judgment. Under SCRCR Rule 60(b)(4) a party is entitled to relief from a judgment if it is void, thus the trial court's October 26, 2009 order of judgment should have been set aside by the Motion Court's Judge Lee, in response to the Appellant's (Plaintiff's) December 15, 2011, Motion to Set Aside.

In light of all the evidence, supporting the existence of a partnership and no evidence opposing the existence of a partnership, as recorded in the official transcript of the record of the July 13, 2009 trial, the Trial Court's October 26, 2009, Order of Judgment, finding for the Defendant is an unmistakable an egregious violation of the Plaintiff's "due process" rights, that are afforded him under the fifth and fourteenth amendments to the United States Constitution. (emphasis added)

Since the Court' October 26, 2009, Order of Judgment was taken in violation of the Plaintiff's constitutional "due process" rights to a fair trial, the Court's October 26, 2009, Order of Judgment, is void. Under Rule 60(b)(4), a party is entitled to relief from a judgment, if it is void.

Therefore the Plaintiff is entitled to relief from the Trial Court's October 26, 2009, Order of Judgment, and this Appellant Court should vacate and/or remand if appropriate, and fair and just.

Respectfully submitted,



Larry A. Yates, Appellant
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West Columbia, SC 29169
Phone: 803-917-6224
Email: laycom6224@gmail.com

July 26, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison Renee Lee, Circuit Court Judge

Docket No. 2008-CP-40-0009

Larry A. Yates Appellant

v.

Estate of Alvin Yates Respondent

BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Alvin Yates and Larry Yates had an "on-again - off again" relationship going back several years prior to the year 2000. On April 12, 2000, this relationship culminated in the filing of a Confession of Judgement with the Clerk of Court for Richland County acknowledging Larry Yates was indebted to Alvin Yates in the amount of \$ 143,978.00.

On or about July 5, 2003, Larry Yates prepared a document entitled *Project Partnership Agreement*. Under the terms of this document, Alvin Yates would purchase a parcel of land in Richland County, finance the purchase and construction of a modular home on the land; and then sell the land and home. Larry Yates would help supervise the construction of the home. Alvin Yates paid for the project by obtaining a Loan secured by a Mortgage on his personal residence, and with personal credit cards. Larry Yates contributed nothing financially to the project. The *Project Partnership Agreement* made no mention of how the profit or loss, was to be shared, how Alvin Yates would be reimbursed for his expenditures, or what the interests of Alvin Yates and Larry A Yates were. Further, the real estate which was developed under the auspices of the *Project Partnership Agreement* and the Contract for the purchase of the modular home were all titled in the name of Alvin Yates.

During the construction phase, Alvin Yates paid all bills for labor and material.

March 18, 2005, after construction was completed, an Installment Contract of Sale was executed by and between Arnold Palmer and Ida D Palmer (Purchasers) and Larry A Yates and Lyndell E Yates [Attorney in Fact for Alvin Yates] (Sellers) for the purchase/sale of the property. Alvin Yates died shortly thereafter on April 16, 2005; his

THE STATE OF SOUTH CAROLINA
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Allison Renee Lee, Circuit Court Judge

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Estate of Alvin Yates Respondent

BRIEF OF RESPONDENT

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March 18, 2005, after construction was completed, an Installment Contract of Sale was executed by and between Arnold Palmer and Ida D Palmer (Purchasers) and Larry A Yates and Lyndell E Yates [Attorney in Fact for Alvin Yates] (Sellers) for the purchase/sale of the property. Alvin Yates died shortly thereafter on April 16, 2005; his

estate was probated in Lexington County. At the time of his death, the Installment Contract of Sale was still active, and the Purchasers were making monthly payments.

Prior to his death, Alvin Yates had negotiated a loan from First Citizens Bank and Trust secured with a Mortgage on the Richland County property developed under the *Project Partnership Agreement* in order to pay off the Mortgage Loan on his Personal home. The Personal Representative of the Alvin Yates Estate agreed to have the Purchaser's (Arnold Palmer and Ida D. Palmer) make their monthly payments under the Installment Contract of Sale direct to First Citizens Bank and Trust. Larry A Yates received none of the monthly payment money. The Palmers thereafter made their monthly payments to First Citizens Bank.

Larry A Yates filed an action in the Lexington County Probate Court claiming (1) there existed a partnership between he and Alvin Yates and (2) he, as the surviving partner, was entitled to the property which Alvin Yates had purchased and developed. That action was dismissed by the Probate Court for Lexington County for lack of jurisdiction.

In 2008 Larry A Yates filed an action in the Court of Common Pleas for Richland County (2008-CP-40-0009) claiming (1) the existence of a partnership between he and Alvin Yates, and (2) as the surviving partner, he was entitled to the property purchased and developed by Alvin Yates. Along with his Complaint, Larry Yates also filed a *Lis Pendens* creating a cloud on the title.

The matter was heard July 13, 2009 by the Honorable J Michelle Childs, Judge, Richland County CCP&GS. The Court ruled there never existed a valid partnership

between Larry A Yates and Alvin Yates; and denied the relief sought by Larry A Yates. The action and the *Lis Pendens* were terminated. Shortly thereafter, the Personal Representative of the Estate concluded the Installment Sales Contract transaction, the mortgage with First Citizens Bank was paid off, and the property was transferred out of the name of Alvin Yates.

Larry A Yates filed a Motion for Reconsideration in Richland County November 30, 2009. This was denied due to lack of timeliness in the filing March 10, 2009.

Larry A Yates filed a Notice of Intent to Appeal with the South Carolina Court of Appeals March 15, 2010. This was dismissed April 28, 2010 due to a lack of timeliness.

Larry A Yates then filed another Motion for Reconsideration in Richland County Court of Common Pleas which was heard March 9, 2012. The Motion was denied.

This appeal followed.

ARGUMENTS

1. DID THE CIRCUIT COURT JUDGE ERR IN USING THE STANDARD OF SOUND DISCRETION IN RULING ON THE SCRPC 60(b)(4) MOTION.

The Appellant argues the Order of the Court dated October 23, 2009 is void. However, he gives no basis in fact or law for making this claim. One can only assume he considers the Order void because it was not in his favor.

The Circuit Court had jurisdiction to hear the case and to render a decision. Ross v Richland Co., 270 S.C. 100, 240 S E 2d 649 (1978). The Appellant points to no error of law, nor abuse of discretion on the part of the Court hearing the March 9, 2012, 60(b)(4) Motion which would form the basis for a reconsideration of the case. Coleman v Dunlap, 306 S C 491, 413 S E 2d 15 (S.C. 1992); Tri-County Ice and Fuel Co. V Palmetto Ice Co., 303 S C 237, 399 S E 2d 779 (1990)

The appellant argues the Court hearing the March 9, 2012 60(b)(4) Motion erred in deciding the Motion based on the sound discretion of the presiding Judge. This issue was long ago decided by the South Carolina Supreme Court which ruled, barring an abuse of discretion, the appeals court should not disturb a trial courts discretionary decision on appeal. Tri-County Ice and Fuel Co., id. The trial court reviewed the record and allowed the Appellant to make his argument and present additional documentary evidence to support his claim. After due consideration, the 60(b)(4) motion was denied.

The Appellant argues the Court at the March 9, 2012 hearing of the 60(b)(4) Motion should have conducted a *De Novo* review of the Order of October 23, 2009. This

does not make sense since there is no "lower court". When Appellant filed his 60(b)(4) Motion, he was asking the Court to review It's own Order; not the Order of a lower Court. Therefore, there is nothing to be reviewed *De Novo*.

2. WERE APPELLANTS DUE PROCESS RIGHTS VIOLATED BY THE RULING OF THE CIRCUIT COURT ON THE SCRPC 60(B)(4) MOTION.

Appellant argues the failure of the trial court to find in his favor on the 60(b)(4) motion denied him his right to Due Process and a Fair Trial.

No person shall be deprived of life, liberty, or property without due process of law. U S Const. Amend XIV, § 1; S C Const. Art. 1 § 3. "In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Sloan v. S C Bd of Physical Therapy Examr's, 370 S C 452, 483, 636 S E 2d 598, 614 (2006); Matthews v Eldridge, 4245 U S 319, 332, 96 S. Ct. 893, 47 L. Ed 18 (1976) (recognizing that before due process [376 S C 473] guarantees are implicated, there must be a deprivation by the government of constitutionally protected interest). Moore v Moore, 376 S C 467, 657 S E 2d 743 (S C 2008).

The Appellant on July 13, 2009 had a full merits hearing, offering documentary evidence and witness testimony. At the 60(b)(4) motion hearing March 9, 2012, the Appellant again offered documentary evidence and oral argument. At neither hearing was Appellant denied the right to offer whatever proof he felt supported his case. Therefore, the sole grounds the Appellant offers as a denial of due process is the fact he lost at both hearings; and therefore the order's of the trial court are void.

The Appellant confuses "quantity" with "quality". He believes because he offered such a vast amount of documentary evidence, he was entitled to win the case. Being a *Pro Se* litigant he did not realize his documentary evidence had to support his claim and not just present facts. The evidence submitted by the Appellant had to do with the

construction of a modular home on the property of the Respondent; and nothing to do with an alleged partnership. There is no dispute that a modular home was constructed on the property of the Respondent, and that the Respondent paid for the property, paid for the purchase of the house, and paid for the construction of the house. Nor is there any dispute the land and the Bill of Sale for the modular were both in the name of the Respondent. There was never anything in the name of an alleged partnership between the Appellant and Respondent.

3. WAS THE TRIAL COURT'S RULING ON THE SCRCP 60(b)(4) MOTION BASED ON SUPPOSITIONS NOT FOUND IN THE RECORD.

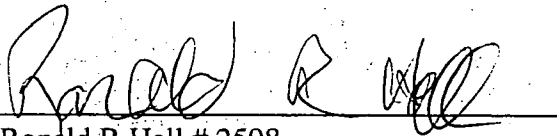
None of the items listed by the Appellant in his arguments as "suppositions not found in the trial record" formed the basis for the Order of the Court.

The trial court looked at the evidence and heard the testimony of the Appellant, then applied the tests set forth by the Court of Appeals for establishing a partnership: (1) Sharing of Profits and Losses, (2) Community of Interests in Capital or Property, (3) Community of Interest in Control and Management . Halsberg v Berry, 302 S C 97, 101, 394 S E 2d 7, 10 (Ct. App 1990). The trial court, in applying these tests to the evidence, found the Appellant's case failed to meet any of the tests; and this was the basis for the ruling of the Court, not some fanciful suppositions Appellant imagines. Further, the trial court hearing the 60(b)(4) Motion agreed with this conclusion. So two different Judges looked at the same evidence and reached the same conclusion: there was no partnership between the Appellant and the Respondent.

CONCLUSION

The Appellant failed to establish the existence of a valid Partnership between himself and Alvin Yates [Decedent] at the merits hearing, and failed to establish any grounds for reconsideration or new trial pursuant to SCRPC 60(b)(4). The ruling of the trial court should be affirmed.

Respectfully Submitted,



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January 22, 2013



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 01, 2014

Larry A. Yates
612 Ashwood Circle
West Columbia SC 29169

Re: Larry Yates v. The Estate of Alvin Yates
Appellate Case No. 2012-212594

Dear Mr. Yates:

On April 8, 2014 we received your motion for enlargement of time in the above matter. Because this appeal has been remitted, this Court has no jurisdiction to consider this filing. We are returning this filing to you with no action having been taken.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Ronald R. Hall, Esquire

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

Docket No: 08-CP-40-0009

RECEIVED

APR 08 2014

SC Court of Appeals

Larry A. Yates Appellant,

v.

The Estate of Alvin Yates Respondent.

MOTION FOR ENLARGEMENT OF TIME

Appellant, Larry A. Yates, hereby moves the Court for an order granting him extra time for making, March 6, 2014, a timely filing date for his Petition for Rehearing.

Pursuant to Rule 221(a), SCACR petitions for rehearing must actually be received by the Appellant Court, no later than fifteen days after the filing of the Opinion. This Court's unpublished Opinion No. 2014-UP-006, was filed February 12, 2014. (Exhibit-A) However, this Appellant did not receive notification of this Court's issuing of the Opinion, or of the filing of the Opinion, until February 19, 2014.

It appears that the Clerk of Court's office, for some unknown reason, failed to timely serve this Appellant a notice of the Opinion being issued and filed, until

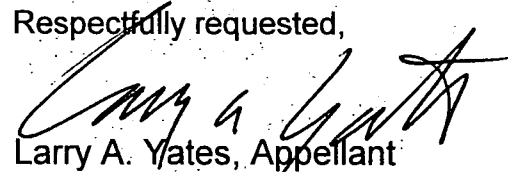
February 18, 2014, which was received by the Appellant on February 19, 2014.
(Exhibit-B)

According to Rule 221(a) SCACR, Appellant's Petition for Rehearing would have needed to be filed with the Court within 7 or 8 days after first receiving notice. Rule 221(a) allows 15 days for filing a Petition for Rehearing. Unfortunately, this pro se Appellant, even with the assistance of a licensed attorney, was not able to research, write and file his Petition for Rehearing until March 6, 2014. (Exhibit-C)

This Appellant could not timely comply with the requirements of Rule 221(a) SCACR, for filing Appellant's Petition for Rehearing, because he was not timely served with a notice, of the filing date, of this Court's Opinion.

Therefore, for good cause shown, this Appellant prays that he be granted extra time for making March 6, 2014, a timely filing date for his Petition for Rehearing.

Respectfully requested,



Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29160
803-917-6224 (Ph)
Laycom6224@gmail.com

April, 8, 2014

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

Docket No: 08-CP-40-0009

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APR 08 2014

SC Court of Appeals

Larry A. Yates Appellant,

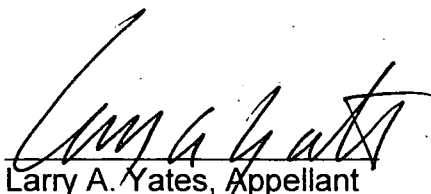
v.

The Estate of Alvin Yates Respondent.

PROOF OF SERVICE

I certify that I have served the "Motion for Enlargement of Time" on the Respondent, by depositing copies in the United States Mail, postage prepaid, on April 8, 2014, to the attorney of record, addressed as follows:

Ronald R. Hall, Esq
Hall & Hall Attorneys at Law
1055 Sunset Blvd
West Columbia, SC 29169



Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29169
Phone 803-917-6224
laycom6224@gmail.com



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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February 28, 2014

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Larry Yates v. The Estate of Alvin Yates
Lower Court Case No. 2008CP4000009
Appellate Case No. 2012-212594

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Larry A. Yates
Ronald R. Hall, Esquire



The South Carolina Court of Appeals

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CLERK

V. CLAIRE ALLEN
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February 18, 2014

Larry A. Yates
612 Ashwood Circle
West Columbia SC 29169

Re: Larry Yates v. The Estate of Alvin Yates
Appellate Case No. 2012-212594

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jenny Abbott Kitchings

CLERK

cc: Ronald R. Hall, Esquire
The Honorable Alison Renee Lee

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Larry A. Yates, Appellant,

v.

The Estate of Alvin Yates, Respondent.

Appellate Case No. 2012-212594

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2014-UP-066
Submitted January 1, 2014 – Filed February 12, 2014

AFFIRMED

Larry A. Yates, of West Columbia, pro se.

Ronald R. Hall, of Hall & Hall Attorneys at Law, of
West Columbia, for Respondent.

PER CURIAM: Larry A. Yates argues the trial court erred in denying his motion to amend its order denying his Rule 60(b), SCRCP, motion. Specifically, he argues the trial court erred in (1) using the "sound discretion of the reviewing judge" standard to review his Rule 60(b) motion; (2) failing to find the trial court's order was void under Rule 60(b)(4) because his due process rights were violated

when the trial court failed to rule in his favor after he presented substantial, uncontested evidence; and (3) failing to find the trial court's order was void under Rule 60(b)(4) because his due process rights were violated when the trial court based its ruling on erroneous suppositions. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the standard of review: Rule 60(b)(4), SCRCP (providing "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding"); *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006) ("Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the [court].").
2. As to the due process issue concerning the substantial, uncontested evidence: Rule 60(b)(4), SCRCP ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . . the judgment is void."); *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) ("The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction."); *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution."); *id.* ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").
3. As to the due process issue concerning the trial court's reliance on erroneous suppositions: *Halersberg v. Berry*, 302 S.C. 97, 101, 394 S.E.2d 7, 10 (1990) (providing three partnership tests for determining whether a partnership exists: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management); *Madren v. Bradford*, 378 S.C. 187, 192, 661 S.E.2d 390, 393 (Ct. App. 2008) ("The appellate court will not disturb the trial court's findings of fact as long as they are reasonably supported by the evidence."); *Kurschner*, 376 S.C. at 171, 656 S.E.2d at 350 ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.").

AFFIRMED.¹

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Allison Renee Lee, Circuit Court Judge

Docket No: 08-CP-40-0009

Larry A. Yates Appellant,

v.

The Estate of Alvin Yates Respondent.

PETITION FOR REHEARING

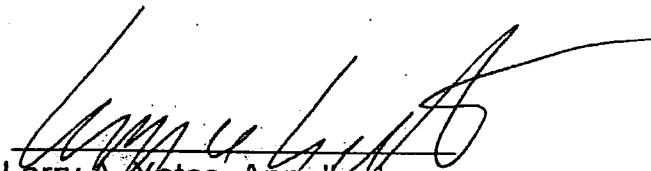
Note: Petitioner receive the unpublished opinion of the Court of Appeals at his home on February 19, 2014, which is fourteen days as of February 5, 2014. Petitioner is now aware of the wording of Rule 221, but would argue that he should have fifteen days from the day he received the opinion to prepare and file his Petition for Rehearing.

(Opinion was mailed on February 18, 2014 and received on February 19, 2014)

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MAR 06 2014

SC Court of Appeals


Larry A. Yates, Appellant
612 Ashwood Circle
West Columbia, SC 29160
803-917-6224 (Ph)
Laycom6224@gmail.com

STATEMENT OF THE CASE
PRELUDE TO
APPELLANT'S PETITION FOR REHEARING

This Appellant, Larry A. Yates, a 73 year old senior citizen, living on Social Security and a small rental income, has been during the past 5 years, seeking what is right, just and fair from the Courts of South Carolina including Richland County Circuit Court and the South Carolina Court of Appeals.

Up until now, I have not experienced Courts that operate efficiently and strive to find the truth and justice for all. Instead, I have experienced, crowded dockets, long waits for rulings, from overworked judges that can't possibly make fair and accurate rulings for trials held 3-4 months prior to hearing dozens or hundreds of cases afterwards. The over worked judges are unnecessarily "taking cases under advisement" and then trying to rule fairly on a "old cold case" after hearing dozens of new cases, in between.

As an example, this Appellant's case was non-jury trial before Judge Childs in July of 2009. I know it was 2009 because I had just lost my wonderful, loving wife to cancer in April of 2009. It was difficult to concentrate on an upcoming trial after experiencing the loss of a loved one. However, I prepared a spiral bound booklet of exhibits, written trial testimony, affidavit of the trial testimony, and including relative case law of state statutes with regard to partnerships.

As a plaintiff, pro se, I presented an amazingly strong case before Judge Childs, documenting the existence of a partnership between myself and my cousin (now deceased). We had an agreement for a partnership to construct a spec home in Blythewood, SC.

Anyway, the record shows a clear and undisputed evidence of a partnership. After cross examination by defendant's attorney, I rested my case.

The defendant was not present at trial and there was no testimony or other evidence presented at trial. The defense rested without doing anything whatsoever. At this point it was expecting that Judge Childs would have ruled judgment for me, the Plaintiff. After all I had an abundance of evidence, testimony, exhibits, affidavit testimony and pertinent partnership case law. It all was evidence that supported the existence of a partnership. The defendant had

nothing. Judge Childs was compelled by law, by the constitution and the scales of justice to rule for me, the plaintiff, based on a preponderance of evidence.

Unfortunately, she did not do so. Instead she "took the case under advisement." And thus started a five year long legal nightmare. Instead of giving me, the sole surviving partner of the partnership, the proceeds of the sale of the \$235,000 home, so that I could pay partnership debts and divide any profits equally between me and the estate of my deceased partner, Judge Childs did eventually rule for the defendant. The Estate of Alvin Yates, my cousin, took the \$235,000 proceeds from the sale, didn't pay any of the bills that were incurred for the construction of the home which left me, the plaintiff, who had all the evidence at the trial before Judge Childs, to pay all of the left over debts. Judge Childs' judgment for the defense has cost me my home by way of foreclosure of a mortgage that was taken to build the Blythewood house. Also, five years of working through the Court maize of motions, appeals, judges, and now hopefully a rehearing determination by this Appellant Court.

Instead of a ruling finding for the plaintiff, which was demanded by the evidence, Judge Childs took more than three months before she ruled for the defendant in a twelve page order which was mostly taken from exparte communication with the defense counsel, including accepting an after trial memorandum that included materials that were not in evidence or part of the trial record. I don't think Judge Childs, meant to make a mistake in her ruling, but she did. Not only did she make a mistake in her ruling, she refused to reconsider her decision or to amend her flawed order that was clearly not based on evidence contained in the trial record.

If the July, 2009, trial would have been a jury trial, it is a 100% probability that a jury would have unanimously reach a verdict for me, the plaintiff, the litigant that had all the evidence. Furthermore, a jury would have reach the correct verdict within a few minutes. How ironic is it that a jury consisting of twelve "non-law school educated" citizens can reach a correct verdict, for a non-contested trial, in only a few minutes; but it takes more than three months for a well trained lawyer-judge to get it wrong and rule for the "non-contesting" party. The jury would have the same evidence as the Judge, but the jury gets it right and the judge gets it wrong? If it would have been wrong for a jury to find for the defendant, then it

was wrong that Judge Childs did find for the "non-contesting" defendant. Judge Childs got it wrong, but the reality was, that nothing was going to persuade Judge Childs to change her ruling in favor for the "non-contesting" defendant.

Judge Childs' order was so bad and so wrong, that it did match the criteria for determining it a void judgment as required by SCRCP Rule 60(b)(4). This appellant did file a motion to set aside Judge Child's order of October, 2009, on the basis that the order is void because it was taken in error and in violation of plaintiff's constitutional rights to a fair trial and/or denial of due process and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs. (emphasis added)

After months of waiting, the Rule 60(b)(4) hearing was scheduled for March of 2012, before Judge Lee. March of 2012, is nearly 3 years after the July of 2009, trial in which Judge Childs should have ruled in favor of me, the plaintiff. At the motion to set aside hearing, before Judge Lee, this appellant filed memorandums of law, transcript of trial, copies of exhibits and gave oral arguments in support of the motion to set aside. The defendant's attorney attend part of the hearing but refused to participate. He rejected copies of my memorandum of law and printed transcript and written arguments. Judge Lee noted his refusal to participate in the hearing and also noted for the record, that he had rudely walked out of courtroom before the hearing was completed.

My plaintiff argument for the hearing, was the same as it is with this Appellant Court. Argument that the trial court order was void from the inception because it was taken in error and in violation of constitutional right to a fair trial and/or denial of due process and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs. It is understood by this appellant, and is confirmed by applicable case law (lots of federal - less state) that in order to determine what error or mistake was made by trial court Judge Childs, under Rule 60(b)(4) the record would need to be examined de novo. The reason for reviewing the record from the beginning, de novo, is that determining error, mistake, due process or violation of constitutional rights and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs, is a matter of law that is determined by review of the record.

In any case, Judge Lee ignored and/or didn't even consider the fact that the trial court Judge Childs based her order of judgment for the defendant, on clear error of ignoring the preponderance of evidence, substantial evidence by plaintiff, defendant not presenting any evidence and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs, and thereby violation of plaintiff's constitutional rights to fair trial and/or denial of due process rights, all of which would only have been substantiated by a review of the trial record.

Judge Lee denial of this appellant's Rule 60(b)(4) motion, was based on a standard of review authority that was, "within the sound discretion of Judge Lee." With that ruling, Judge Lee was saying that the actions and ruling of Judge Childs, was not taken in error or in violation of constitutional right to a fair trial and/or denial of due process and/or order not reasonably supported by the evidence and/or unsound discretion by Judge Childs.

This appellant filed his Notice of Appeal of Judge Lee's June 7, 2012, Order denying his motion to set aside, with this Court of Appeals, on July 26, 2012

APPELLANT'S PETITION FOR REHEARING

Appellant Court Rule 221(a) requires petitioner to, "state with particularity the points supposed to have been overlooked or misapprehended by the court." Appellant's issues with this Court's Review and Opinion for Appellant's Arguments as set forth in his Final Brief, are:

1. how could motion court's Judge Lee determine "preponderance of evidence" and/or "constitutional rights" and/or "rights to fair trial" issues without reviewing the trial record, de novo?
2. how could motion court's, Judge Lee, determine "clearly erroneous" and/or "substantial evidence" and/or "denial of due process" issues without reviewing the trial record, de novo?
3. why the "standard of review" for Rule 60(b)(4) may or may not be the same "standard of review" as for Rule 60(b)(1), (2), (3) or (5)
4. why would this appeal court cite BB & T v. Taylor, 369 S.C. 548, 551,633 S.E.2d 501,502 (2006) to justify "within the sound discretion of the hearing judge" as a standard of review for appellant's Rule 60(b)(4) motion, when the Supreme Court determined that its, "standard of review" (for BB & T v. Taylor) "is limited to

determining whether there was an abuse of discretion"? Would "determining whether there was an abuse of discretion," require a de novo standard of review?

5. also, in BB & T v. Taylor, this appeal court's affirmation of the circuit court's denial of Appellant Taylor's motion to set aside, was reversed by the Supreme Court.

6. would the trial court's failure to rule for the existence of a partnership, be an abuse of discretion by the trial court judge, and void her October 26, 2009, order when the "substantial evidence contained in the record" clearly documents the existence of a partnership?

7. would the motion court's failure to determine that the trial court judge failed to rule for the existence of a partnership, be an abuse of discretion by the motion court judge, and void her June 7, 2012, order, when the "substantial evidence contained in the record" clearly documents the existence of a partnership?

8. would the trial court's issuing an order that was "clearly erroneous" be an abuse of discretion, by the trial court judge, and void her October 26, 2009, order?

9. would the motion court's failure to determine that the trial court judge issued an order that was "clearly erroneous" be an abuse of discretion by the motion court judge, and void her June 7, 2012, order?

10. would the trial court's issuing a order that contained mostly "opinions of defendant's attorney not in evidence that were obtained after trial by way of exaparta communications" be an abuse of discretion, by the trial court judge, and void her October 26, 2009, order?

11. would the motion court's failure to determine that the trial court judge issued an order that contained mostly "opinions of defendant's attorney not in evidence that were obtained after trial by way of exaparta communications" be an abuse of discretion by the motion court judge, and void her June 7, 2012, order?

12. would this appeal court have affirmed the motion court's appealed order, had this appeal court confirmed that the trial court's October 26, 2009, order was controlled by "opinions of defendant's attorney not in evidence that were obtained after trial by way of exaparta communications"? (R.p.17.¶.5) (Motion Court's June 7, 2012 order)

13. would this appeal court have affirmed the motion court's appealed order, had this appeal court confirmed that the trial court's October 26, 2009, order was

controlled by statements of fact that are not supported by the trial record? (see page 18 of the appellant's final brief)

14. would the trial court's failure to rule with the "preponderance of evidence" be an abuse of discretion, by the trial court judge, and void her October 26, 2009, order?

15. would the motion court's failure to determine that the trial court judge failed to rule with the "preponderance of evidence" be an abuse of discretion by the motion court judge, and void her June 7, 2012, order?

16. why Judge Lee would have cited, Perry v. Heirs at Law of Gadsden, 357 S.C. 42, case law for a Rule 60(b)(3) Motion as a justification of her standard of review for this Appellant's Rule 60(b)(4) Motion?

17. why Judge Lee would have cited, Tobias v. Rice, 379 S.C. 357, case law for a Rule 60(b)(1) Motion as a justification of her standard of review for this Appellant's Rule 60(b)(4) Motion?

CONCLUSION

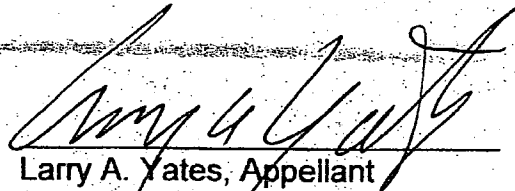
Wherefore, on multiple grounds, the trial court's order of judgment issued on October 26, 2009, includes multiple abuses of discretions, by trial judge Childs as set forth above. An order taken by way of a judge's abuse of discretion was taken in violation of the plaintiff's constitutional "due process" rights to a fair trial, and therefore trial judge's October 26, 2009, order of judgment, is void.

Under Rule 60(b)(4), a party is entitled to relief from a judgment, if it is void. Therefore, the trial court's October 26, 2009 order of judgment should have been set aside by the motion court's Judge Lee, in response to the appellant's December 15, 2011, Motion to Set Aside.

In light of all the evidence, supporting the existence of a partnership and no evidence opposing the existence of a partnership, as recorded in the official transcript of the record of the July 13, 2009 trial, the trial court's October 26, 2009, order of judgment, finding for the Defendant, is an unmistakable an egregious violation of the Plaintiff's "due process" rights, that are afforded him under the fifth and fourteenth amendments to the United States Constitution. (emphasis added)

This appellant is entitled to relief from the trial court's October 26, 2009, order of judgment, and therefore the motion court's Judge Lee's June 7, 2012, order denying this appellant's motion to set aside, should be reversed. The motion court Judge Lee abused her discretion in denying appellant's motion to set aside the trial court's October 26, 2009, order of judgment and therefore Judge Lee's June 7, 2012 order of judgment should be reversed and remanded by a Court of Appeals' decision.

Respectfully submitted,



Larry A. Yates, Appellant
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Email: laycom6224@gmail.com

March 5, 2014