

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP3600109

Larry E Koon Allen Lee Koon	Thomas Jackson Construction Inc
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (~~format order to follow~~) Statement of Judgment by the Court

ORDER INFORMATION

RECEIVED
 NEWBERRY COUNTY
 CLERK OF COURT
 2014 JUN 2 PM 10 47
 JACQUELINE SCROVERS
 CLERK OF COURT

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amount contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

RECEIVED
 COURT OF APPEALS



2167

5/30/14

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on June 2, 2014, and a copy mailed first class or placed in the appropriate attorney's box on June 3, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Jennifer Dowd Nichols PO Box 1000 135 Columbia Avenue
Chapin, SC 29036

Mindy Westbrook Zimmerman PO Box 1207 Newberry,
SC 29108

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S. Bowers (gs)

Court Reporter

Jackie S Bowers - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
 COUNTY OF NEWBERRY) CASE NO. 2014-CP-36-00109

Larry E. Koon and Allen Lee Koon by)
 and through his attorney in fact Larry E.)
 Koon,)
)
 Plaintiffs.)

vs.)

Thomas Jackson Construction, Inc.,)
)
 Defendant.)

FINAL ORDER
 (Non-Jury Trial)

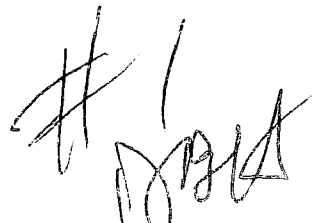
FILED
 NEWBERRY COUNTY
 2014 JUN 2 PM 10 47
 JACKIE S. BOWERS
 CLERK OF COURT

This matter came before me on a Motion for Summary Judgment filed by the Plaintiffs and a Motion to Dismiss filed by the Defendant. Based on the following I grant the Plaintiffs' Motion for Summary Judgment and deny the Defendant's Motion to Dismiss.

BACKGROUND

This is an independent action to relieve the Plaintiffs from a judgment pursuant to South Carolina Rules of Civil Procedure Rule 60 (b) and to obtain an order requiring the Clerk of Court to satisfy the judgment of record.

The Defendant was served on March 1, 2014. All affidavits of service were filed with the Newberry County Clerk of Court. The Defendant filed an Answer, Defenses, and Counterclaim and a Motion to Dismiss on March 12, 2014. The Plaintiffs filed a Motion for Summary Judgment with supporting affidavits on March 27, 2014. No opposing affidavits were filed by the Defendant. On April 7, 2014, the Defendant submitted a Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment. On April 8, 2014, the Plaintiffs submitted a Reply to the Defendant's Counterclaim, a Brief in Opposition to Motion to Dismiss and in Support of



Motion for Summary Judgment and a Reply to Defendant's Memorandum in Opposition to Motion for Summary Judgment.

A hearing was held in this matter before me on April 9, 2014. Present at the hearing were Robert W. Dibble, Jr., Attorney for the Plaintiffs and Mindy W. Zimmerman, Attorney for the Defendant. At the hearing, the Plaintiffs submitted, without objection, an uncertified copy of the court file in Civil Action No. 2006-CP-36-395. The attorney for each party, as well as the Court, referred to the contents of that file during the hearing.

FINDINGS OF FACT

In 2006, in Civil Action No. 2006-CP-36-395, Thomas Jackson Construction, Inc. brought suit against Lake Murray Tree, Inc. to collect money on an open account resulting from the failure of Lake Murray Tree, Inc. to pay for work performed by Thomas Jackson Construction, Inc. Allen Lee Koon was the sole shareholder, as the below Special Referee so found, of and registered agent for Lake Murray Tree, Inc. However, Allen Lee Koon was not named as a defendant in that action, and no Summons or Rule to Show Cause was ever served upon him or upon his attorney in that action. Furthermore, neither he nor his attorney ever accepted service of a Summons or Rule to Show Cause naming Allen Lee Koon as a party to that action. The complaint, which was never amended, did not contain a cause of action seeking to pierce the corporate veil.

By consent, the matter was referred to the Honorable James S. Verner as Special Referee for Newberry County on June 16, 2007. Following a hearing, an Order was entered in that action on July 31, 2007 granting a judgment in the amount of Twenty Five Thousand Fifty-Six and 00/100 Dollars (\$25,056.00) in favor of Thomas Jackson Construction, Inc. against Lake Murray Tree, Inc. That Judgment was entered of record on August 6, 2007. On March 27, 2008, an

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execution against property was issued by the Clerk of Court in connection with that judgment. The execution was returned *nulla bona* on June 28, 2008. On August 18, 2008, Thomas Jackson Construction, Inc. served a subpoena on Lake Murray Tree, Inc. (not Allen Lee Koon, individually) requesting the production of documents.

On October 26, 2009, the Honorable James S. Verner, as Special Referee for Newberry County issued an Order Relieving Counsel for Lake Murray Tree, Inc. No new counsel appeared for Lake Murray Tree, Inc. On November 4, 2009, Thomas Jackson Construction, Inc. filed a Motion for Contempt Order and Sanctions. The motion was directed only to Lake Murray Tree, Inc. A hearing on that motion was held on November 10, 2009. Allen Lee Koon appeared at that hearing as the sole shareholder of Lake Murray Tree, Inc., not individually, and without counsel. On January 12, 2010, an Order was entered granting the Motion for contempt and sanctions. As a sanction under Rule 37(b)(2), that Order entered judgment against Allen Lee Koon personally in the amount of Thirty-Two Thousand Eight Hundred Fifty-Eight and 80/100 Dollars (\$32,858.80) based only on the fact that he was the sole shareholder of Lake Murray Tree, Inc. The judgment against Allen Lee Koon was entered on February 1, 2010 in Judgment Roll 2010TR36173 in the Office of the Clerk of Court for Newberry County, South Carolina. The file in Civil Action No. 2006-CP-36-395 does not contain proof of service on Allen Lee Koon of the Referee's Order granting judgment against him personally. On February 25, 2010, Lake Murray Tree, Inc. sought relief from the judgment against it. The motion was signed by Allen Lee Koon as the registered agent for Lake Murray Tree, Inc. Arguably, this Motion was on behalf of Koon personally as well. This Motion is not clear enough to make a definitive ruling. There is no order in the record disposing of that motion.

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JBL

On November 26, 2012, Allen Lee Koon executed a Power of Attorney in favor of his father, Larry Eugene Koon. That Power of Attorney was recorded in the office of the Clerk of Court for Newberry County in Book 1659 at page 273 and remains valid today.

Larry Eugene Koon alleges he first became aware of the Judgment held by Thomas Jackson Construction, Inc. against Allen Lee Koon on August 23, 2013, two (2) days prior to the scheduled closing of some property. Allen Lee Koon alleges he did not learn of the judgment against him until August or September 2013.

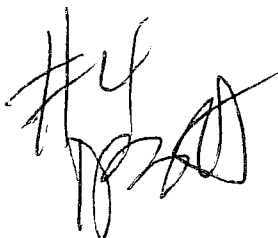
CONCLUSIONS OF LAW

I address the issues in the Defendant's Motion to Dismiss and the Plaintiffs' Motion for Summary Judgment in turn.

Rule 37 does not allow the entry of judgment against a non-party as a sanction

Rule 37 is exclusively directed to remedies and sanctions for failure to make or cooperate in discovery. Under the provisions of Rule 37(b)(2), the Court is limited to sanctions against a party to the action who, if an individual, fails to make or cooperate in discovery or fails to obey a court order or which, if an entity, through an officer, director or managing agent fails to make or cooperate in discovery or fails to obey a court order. Rule 37(b)(2) authorizes the Court to issue various sanctions against a party to the action, but it does not authorize the Court to sanction a person, by way of judgment, who is not a party to the action even though he or she is an officer, director or managing agent of an entity which is a party to the action.

Rule 37(b)(2) authorizes the Court in which the action is pending to make such orders as are just in regard to the failure to make or cooperate in discovery or to obey a court order. However, the Court may do so only when the Court has obtained personal jurisdiction over the

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person who does so. In order to reach the assets of a shareholder of a defendant corporation, the Plaintiff must assert a cause of action seeking to pierce the corporate veil. Drury Development Corp. v. Foundation Ins. Co., 380 S.C. 97, 668 S.E. 2d 798 (2008). No such cause of action was ever asserted in Civil Action No. 2006-CP-36-395.

When a judgment is entered against a defendant who was never was within the Court's jurisdiction, the judgment is void. A void judgment is one that, from its inception, is a complete nullity and without legal affect. Thomas & Howard Co. V. T.W. Graham & Co., 318 S.C. 256, 457 S.E.2d 340 (1999). "The definition only encompasses judgments from courts which failed to provide due process or judgments from courts which lacked subject matter or personal jurisdiction." Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002).

Since the complaint in the 2006 case did not contain a cause of action to pierce the corporate veil, the complaint would have had to be amended and Allen Lee Koon, individually, would have had to be made a party to that action. Because neither of those things occurred, there is no basis for the entry of a judgment as a sanction or otherwise against Allen Lee Koon, individually, as the sole shareholder of Lake Murray Tree, Inc. in Civil Action No. 2006-CP-36-395. Allen Lee Koon's involvement in the 2006 case was not on behalf of himself individually but on behalf of Lake Murray Tree, Inc.

For the foregoing reasons, the Motion to Dismiss cannot be based on a violation of Rule 37 in general or upon Rule 37(b)(2) specifically because (1) no such violation exists, (2) the judgment against Allen Lee Koon was improperly entered because he was not a party to the action and was not subject to the personal jurisdiction of the Court, (3) Rule 37(b)(2) does not allow sanctions, by way of judgment, against one who is not a party to the action and (4) an

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action to pierce the corporate veil was not initiated by Thomas Jackson Construction, Inc. in order to reach the assets of Allen Lee Koon. The Special Referee abused his discretion in awarding the previously entered judgment against the corporation later against Koon personally.

Proper method to seek relief from Judgment

Rule 72

The second issue is whether or not this action was filed in violation of Rule 72, SCRCF. Rule 72 reads as follows: "Appeal may be taken, as permitted by law, from any final judgment or appealable order." Rule 72 by its terms addresses only the right of appeal from a final judgment or appealable order.

To the extent the Motion to Dismiss is based on the failure of Allen Lee Koon to appeal from the entry of judgment against him personally in Civil Action No. 2006-CP-36-395, the Motion to Dismiss must still fail. First, Allen Lee Koon was not a party to that action and had no right to appeal from the Order entering Judgment against him. Even if he knew of the judgment against him, he had the absolute right to treat the judgment a nullity since he was never made a party to that action, and Rule 37(b)(2) did not authorize the entry of judgment against him as a sanction. Second, if he had a right to appeal, his failure to do so simply resulted in the judgment against him becoming final which brings it squarely within the scope of Rule 60(b) SCRCF, upon which this action is based.

Nothing in Rule 72 prohibits the Plaintiffs from bringing an action to set aside the judgment against Allen Lee Koon individually. Therefore, the institution of this action by the Plaintiffs does not violate Rule 72.

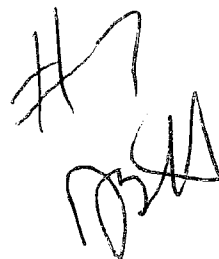
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Rule 60

The next issue is whether or not Rule 60 provides a method to seek relief from a void judgment. Rule 60(b) SCRPC, explicitly authorizes the institution of this action. "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment..." Rule 60(b), SCRPC. Therefore, this action was not filed in violation of Rule 60.

To the extent that the Motion to Dismiss is intended to assert that this action was not timely filed under the provisions of Rule 60(b), the Motion to Dismiss must still fail. The Affidavit of Larry Eugene Koon alleges that he, personally, and as attorney-in-fact for Allen Lee Koon, was unaware of the judgment against Allen Lee Koon individually until August 23, 2013. The Affidavit of Allen Lee Koon alleges that he was unaware of the judgment against him until August or September 2013. This action was commenced in February 25, 2014, within six (6) months after the Plaintiffs became aware of the judgment. While there is authority in South Carolina that a void judgment may be attacked at any time, other cases have applied the reasonable time provisions set out in Rule 60(b) to motions and independent actions to set aside judgments. Therefore, even if the filing of the judgment against Allen Lee Koon provided constructive notice, the reasonable time provision of Rule 60(b) controls.

The case of Sijon v. Green, 289 S.C. 126, 345 S.E.2d 246 (1986) is directly on point. Green had judgments entered against him at a hearing on August 7, 1979 totaling One Thousand One Hundred Seventy-Five and 00/100 Dollars (\$1,175.00). Green brought an action to set aside the judgments alleging that he had no notice of the August 7, 1979 hearing and that he was unaware of the judgments until 1984, some five (5) years later. The Trial Court set aside the judgments, and Sijon appealed.

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The Supreme Court noted in footnote 2 of that case that "Rule 60(b)(4) S.C.R. Civ. P. requires that motions to set aside a judgment on the ground it is void must be brought within a reasonable time." Sijon, 289 S.C. at 128, 345 S.E.2d at 248. The Court did not dismiss the case on the ground that it was not brought within a reasonable time. Therefore, implicitly, the Court found that the case was brought within a reasonable amount of time after Mr. Green learned of the judgments in 1984 that had been entered against him in 1979. This current action was also brought within a reasonable time under Rule 60 S.C.R.C.P.

S.C. Code Ann. § 15-3-530

The final ground for the Motion to Dismiss is that the action is barred by the Statute of Limitations set out in S.C. Code Ann. §15-3-530. That code section does not apply to an action to set aside a judgment under Rule 60(b)(2). The causes of action to which it pertains are specifically set out, and an action under Rule 60(b) to set aside a judgment on the ground that the judgment is void is not among those enumerated. Beyond that, however, there are other reasons why the statute does not apply to this action. First, the section does not apply to actions in equity such as this case. Parrott v. Dickson, 151 S.C. 114, 148 S.E. 704 (1929), Fanning v. Bogacki, 111 S.C. 376, 98 S.E. 137 (1919), DuPont v. DuBos, 52 S.C. 244, 29 S.E. 665 (1898), McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953). Second, the limitation period began to run when the circumstances would put a person of common knowledge and experience on notice that some claim against another party might exist. Turner v. Milliman, 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009). Since neither Allen Lee Koon nor Larry Eugene Koon claim they knew of the judgment against Allen Lee Koon until August of 2013, this action was brought well within the three (3) year limitation.

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Therefore, Section 15-3-350 does not apply to this action, and if it does, under the circumstances and the provisions of the discovery rule, this action was timely filed.

For the foregoing reasons, the Defendant's Motion to Dismiss is denied because (1) Rule 37(b)(2) does not allow for a previously entered judgment against a corporation to be awarded against an individual of the corporation as a sanction, against an individual who is not a party to the action, to do so is an abuse of discretion; (2) Rule 72 does not prohibit this action, (3) this action is explicitly authorized by Rule (60)(b), (4) this action was brought within a reasonable amount of time after the Plaintiffs learned of the judgment against Allen Lee Koon personally, and (5) Section 15-3-530 does not apply.

Motion for Summary Judgment

When determining whether to grant summary judgment, a court must examine both the facts and the law; because a court must conduct the examination of law and facts, such an examination constitutes a trial. Brandt v. Gooding, 368 S.C. 618, 630 S.E.2d 259 (2006). Summary judgment may be granted only when, construing all ambiguities and inferences most strongly against moving party, pleadings and admissions on file show that there is no genuine issue of fact and that moving party is entitled to judgment as matter of law. Hatchell v. Jackson, 290 S.C. 256, 349 S.E.2d 407 (Ct. App. 1986).

The Plaintiffs have filed a Motion for Summary Judgment based on the fact that Allen Lee Koon was never made a party defendant to Civil Action No. 2006-CP-36-395 and, therefore, the judgment entered against him in that action is void for lack of personal jurisdiction.

As the Court of Appeals said in Ware v. Ware, 324 S.C. 639 478 S.E.2d 868 (Ct. App. 2013):

A void judgment is one that, from its inception, is a complete nullity and without legal affect. Thomas & Howard Co. v. T.W.

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Graham & Co., 318 S.C. 256, 457 S.E.2d 340 (1999). 'The definition only encompasses judgments from courts which failed to provide due process or judgments from courts which lacked subject matter or personal jurisdiction.' Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)....

The Plaintiffs' Motion for Summary Judgment is supported by affidavits from Allen Lee Koon, Larry Eugene Koon and Samuel M. Price, Jr., Esq., who served as the attorney for Lake Murray Tree, Inc. for a period of time during the initial action. The Affidavit of Allen Lee Koon states unequivocally (1) that he was not named as an individual party defendant in Civil Action No. 2006-CP-36-395, (2) that he was never served with a Summons or Rule to Show Cause naming him as an individual party defendant in that action and (3) that he never accepted service on either a Summons or Rule to Show Cause naming him as an individual party defendant in that action. Samuel M. Price, Jr., Esq. submitted an Affidavit in support of the Motion for Summary Judgment. He stated (1) that he represented Lake Murray Tree, Inc. in Civil Action No. 2006-CP-36-395, (2) during the time he represented Lake Murray Tree, Inc. he never accepted service on a Summons or Rule to Show Cause naming Allen Lee Koon individually as a party to that action in any capacity and (3) the only Defendant in that action while he represented Lake Murray Tree, Inc. was Lake Murray Tree, Inc. There is no evidence in the record to contradict either of those affidavits.

In the absence of personal jurisdiction an order affecting the rights of a party cannot be effective without proper notice to the party whose rights are to be affected. In the case of S.C. Dept. Rev. v. McClure, 350 S.C. 404, 566 S.E.2d 198 (Ct. App. 2002), the Court held that an Order issued by the Master-in-Equity was not binding upon the Department of Revenue because the Master lacked personal jurisdiction over the Department. The Court held as follows:

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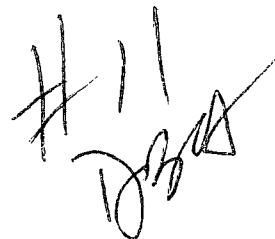
On appeal, SCDOR argues the master's rule to show cause did not contain the essential elements of a summons and, therefore, the master did not have personal jurisdiction over it. We agree.

"[A] judgment is void ... if a court acts without [personal] jurisdiction." Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); see also Coogler v. Cal. Ins. Co. of San Francisco, Cal., 192 S.C. 54, 58-59, 5 S.E.2d 459, 461 (1939) ("[N]o order or judgment affecting the rights of a party ... should be made or rendered without [proper] notice to the party whose rights are to be thus affected..."). A court ordinarily obtains personal jurisdiction by the service of a summons. See State v. Sanders, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920) ("The purpose of the summons is to acquire jurisdiction of the person of the defendant ..."); cf. Rule 3(a) SCRCP ("A civil action is commenced by filing and service of a summons and complaint."). However, our supreme court has "previously excused the use of the Rule to Show Cause [in place of a summons] to obtain [350 S.C. 408] jurisdiction when it contained the essential elements of a valid summons." Citizens & Southern Nat'l Bank of S.C. v. First Palmetto State Bank & Trust Co., 279 S.C. 252, 254, 305 S.E.2d 80, 80 (1983).

"[O]ne of the most important elements of a Summons is the time it allots for the defendant to appear." Id. at 254, 305 S.E.2d at 80-81. In Citizens & Southern, the rule to show cause provided it was returnable in twelve days, "rather than the twenty days then required of a Summons." Id. at 254, 305 S.E.2d at 81. Therefore, the court held the rule to show cause did not contain the essential elements of a summons. Thus, the circuit court did not properly have personal jurisdiction over the defendant. Id.

A defendant must be given thirty days in which to answer a summons. Rule 12(a), SCRCP. In the present case, SCDOR was served with a copy of the rule to show cause on April 4, 2001, and ordered to appear on April 25, 2001. SCDOR had only twenty-one days in which to respond, not thirty as required by Rule 12(a), SCRCP. According to our supreme court's holding in Citizens & Southern, the master's rule to show cause lacked an essential element of a summons.

Therefore, the master lacked personal jurisdiction over SCDOR, and the order binding it to the master's initial Judgment of Foreclosure and Sale is void and must be vacated. See Thomas & Howard Co., 318 S.C. at 291, 457 S.E.2d at 343; Coogler, 192 S.C. at 58-59, 5 S.E.2d at 461.

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For the foregoing reasons, we find the master did not have personal jurisdiction over SCDOR and, therefore, his order extinguishing its lien is VACATED.

In the case of Thornton v. Alford, 274 S.C. 1, 760 S.E.2d 179 (1979) Justice Ness, writing for the Court held:

Finally, no summons or rule to show cause accompanied the order. As a result, the Court lacked jurisdiction over the appellant. Lee v. Storfer, et al., 159 SC 70, 247 S.E. 177 (1930); Section 15-9-10, Code of Laws of South Carolina (1976). See also, Ex. Parte Jones, 160 S.C. 63 158 S.E.2d 134 (1931); Jordan v. Wilson, 69 S.C. 256, 48 S.E. 224 (1904); 61 Am. Jur. Section 349, p. 750. Disobedience of an order without jurisdiction is not contempt. State ex rel McLoud v. Holcomb, 245 S.C. 63, 138 S.E.2d 707 (1964). Long v. McMillian, 226 S.C. 598, 86 S.E.2d 477 (1955). The order appealed from must therefore, be reversed and the issuing Court admonished for its failure to observe the barest rudiments of substantive or procedural law.

The evidence in the record conclusively establishes that Allen Lee Koon was never made a party to Civil Action No. 2006-CP-36-395 and never personally appeared in that action in his individual capacity. After considering the affidavits, the record before the Court and arguments of counsel, and after construing all ambiguities and inferences strongly against the Plaintiffs, I find and conclude that the pleadings, the affidavits and evidence presented establish that there is no genuine issue of material fact as to whether Allen Lee Koon was subject to the personal jurisdiction of the Court in Civil Action No. 2006-CP-36-395. Therefore, I find and conclude that the judgment against Allen Lee Koon in Civil Action No. 2006-CP-36-395 is void ab initio, is a nullity and is unenforceable and had no legal effect, and therefore, the Plaintiffs are entitled to a judgment and order vacating the judgment against Allen Lee Koon personally in Civil Action No. 2006-CP-36-395 as a matter of law.

Accordingly, the Motion to Dismiss must be denied and judgment must be entered in Plaintiffs' favor. It is clear the Special Referee abused his discretion in awarding this judgment against Koon individually pursuant to Rule 37 S.C.R.C.P.

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DECREE

THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED:

- A. The Court denies the Defendant Thomas Jackson Construction, Inc.'s Motion to Dismiss and Grants the Plaintiffs' Motion for Summary Judgment.
- B. The Judgment issued against Allen Lee Koon individually in Civil Action No. 2006-CP-36-395 should be and is hereby vacated because it is void, and the Clerk of Court for Newberry County is directed to satisfy of record the judgment entered against Allen Lee Koon individually in Civil Action No. 2006-CP-36-395.

AND IT IS SO ORDERED.



The Honorable Donald B. Hocker
Circuit Court of the Eighth Judicial Circuit

May 30, 2014.

#13

THE LAW OFFICES OF
ZIMMERMAN
& **SHEALY**
LLC

Mindy W. Zimmerman
Benjamin L. Shealy
Teresa S. Player

The Griffith Law Building
1207 Friend Street
Post Office Box 1207
Newberry, South Carolina 29108
Phone: (803) 321-0000
Facsimile: (803) 321-0407

June 4, 2014

Joy E. Holston
118 Sandy Beach Drive
Prosperity, SC 29127

Re: Thomas Jackson Construction v. Larry E. Koon and Allen Lee Koon, by and
through his attorney in fact, Larry E. Koon
2014-DR-36-00109
Hearing from April 9, 2014

Dear Ms. Holston,

On April 9, 2014, a hearing in the above captioned case was held before The Honorable Donald B. Hocker, Circuit Court Judge, in Newberry County. My records indicate that you were the court reporter at both hearings of this case.

I respectfully request that you provide me with a transcript of the proceedings from said hearing. Please transcribe the entire record. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Should you have any questions regarding this matter, please feel free to contact me.

Sincerely,


Mindy W. Zimmerman

Cc: Jennifer Dowd Nichols, Esquire
Robert W. Dibble, Jr. Esquire
SC Court Administration
Clerk, Court of Appeals