

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

The Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2011-CP-26-4800
Appellate Case No. 2013-002602

Becky Lynette West, Appellant.

v.

Luck Avenue Properties, Inc. a/k/a Luck Avenue Properties, LLC, Respondent.

RECORD ON APPEAL

Kevin M. Hughes
P.O. Box 3940
North Myrtle Beach, SC 29582
(843) 249-7932 Phone
(843) 249-4694 Fax
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Attorney for Appellant

Christopher H. Pearce, Esquire
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cpearce@pearcelawgroup.com
Attorney for Respondent

RECEIVED

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Civil Action No. 2011-CP-26-04800

Becki Lynette West,

Plaintiff,

vs.

Luck Avenue Properties, Inc. a/k/a Luck
Avenue Properties, LLC,

Defendant.

ORDER ON
PLAINTIFF'S MOTION TO RESTORE

13 OCT 25 AM 2:55
CLERK OF COURT

This matter was before the Court on Tuesday, October 1, 2013 pursuant to Plaintiff's Motion to Restore, under Rule 40(j), SCRCP. Christopher H. Pearce, counsel for Defendant Luck Avenue Properties, Inc. a/k/a Luck Avenue Properties, LLC ("Defendant") and Kevin M. Hughes, attorney for Plaintiff Becki Lynette West ("Plaintiff") were present. For the reasons set forth below, the Motion to Restore by Plaintiff is hereby DENIED.

FACTS

The facts, viewed in the light most favorable to Plaintiffs, are as follows:

1. This matter arises out of an alleged trip and fall by Plaintiff at Defendant's property on June 8, 2008.
2. The Summons and Complaint in this action were filed by Attorney Hughes on June 6, 2011.
3. On July 13, 2013, The Honorable Steven H. John signed a Consent Order on Defendant's Motion for Sanctions and Striking case Pursuant to Rule 40(j) causing the matter to be stricken from the docket.

4. On July 16, 2013, counsel for Plaintiff moved for an Order to restore the matter pursuant to Rule (j), SCRCP.

CONCLUSION

For the reasons set forth above, this Court concludes it considered the arguments of counsel and as a matter of law, the Court finds that Counsel for Plaintiff did not seek restoration of the matter until one year and three (3) days after the matter was stricken from the docket by The Honorable Steven H. John.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Restore is denied.

AND IT IS SO ORDERED.



The Honorable Larry B. Hyman
Fifteenth Judicial Circuit

This 11 day of Oct, 2013.
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP-26-04800

Becki Lynette West,

Plaintiff,

vs.

Luck Avenue Properties, Inc. a/k/a Luck
Avenue Properties, LLC,

Defendant.

**CONSENT ORDER ON
DEFENDANT'S
MOTION FOR SANCTIONS AND
STRIKING CASE PURSUANT TO RULE
40(j)**

FILED
1000
12 JUL 16 AM 11:2
MELANIE HUGHES-WARD
CLERK OF COURT

COMES NOW, counsel for Defendant Luck Avenue Properties, Inc. a/k/a Luck Avenue Properties, LLC ("Defendant Luck"), Christopher H. Pearce, Esq., of The Pearce Law Group P.C. ("Pearce"), and counsel for the Plaintiff Becki Lynette West ("Plaintiff West"), Kevin M. Hughes, Esq. of the Hughes Law Firm ("Hughes"), whom hereby consents and agrees to this Consent Order on Defendant Luck's Motion for Sanctions and otherwise represent the following to the Court:

1. Counsel for Plaintiff West, hereby agreed to provide the required Answers to Defendant Luck's Interrogatories and Responses to Defendant Luck's Request for Production no more than thirty (30) days from the date of a Consent Order which was filed in this matter on March 8, 2012;
2. Thereafter, Counsel for Plaintiff West failed to provide the required written discovery responses as agreed to;

15/3
AHJ

3. As such, Counsel for Defendant Luck subsequently filed a Motion for Sanctions against Plaintiff West for the continuing failure to provide responses to Defendant Luck's written discovery.

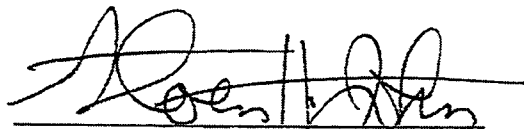
4. Said Motion for Sanctions was scheduled for hearing on June 26, 2012. However, prior thereto, Counsel for Defendant Luck agreed the following in order to resolve the pending Motion for Sanctions:

(a). Counsel for Plaintiff West shall pay to Counsel for Defendant Luck \$573.00 in fees, costs, and expenses related to the reasonable pursuit of the Motion to Compel and Motion for Sanctions relating to the substantially outstanding written discovery that remains due and owing from the Plaintiff; and

(b). Counsel for Plaintiff West and Defendant Luck hereby consent to the dismissal of this action from the active trial docket pursuant to Rule 40(j), SCRCP;

(c). The Parties may continue to conduct discovery during the Rule 40(j), SCRCP, dismissal period prior to restoration of the case to the trial docket as otherwise agreed to be the parties.

AND IT IS SO ORDERED.



The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

July 13, 2012
Conway, South Carolina



I SO MOVE AND CONSENT:

Christopher H. Pearce
Christopher H. Pearce, Esquire
Attorney for Defendant Luck Avenue
Properties, Inc. a/k/a Luck Avenue Properties,
LLC

I CONSENT:

Kevin M. Hughes
Kevin M. Hughes, Esquire
Attorney for Plaintiff Becki Lynette West

3
[Signature]

STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

Becki Lynette West)

Plaintiff,)

vs.)

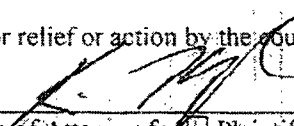
Luck Avenue Properties, Inc. a/k/a)
Luck Avenue Properties, LLC.)

Defendant.)

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

CASE NO.: 2011-CP-26-4800

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Kevin M. Hughes, Bar No. 15974</u> Address: <u>P.O. Box 3940, North Myrtle Beach, SC 29582</u> Phone: <u>(843) 249-7932</u> Fax <u>(843) 249-4694</u> E-mail: <u>khugheslaw@aol.com</u> Other: _____	Defendant's Attorney: <u>Christopher H. Pierce, Bar No. _____</u> Address: <u>1294 Professional Drive Suite B, Myrtle Beach SC 29577</u> Phone: <u>(843) 839-3210</u> Fax <u>(843) 839-3214</u> E-mail: _____ Other: _____																
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information Nature of Motion: <u>Motion to Restore</u> Estimated Time Needed: <u>10 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO																	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div> <u></u> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant </div> <div> <u>7/16/13</u> Date submitted </div> </div>																	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy		<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		<input type="checkbox"/> Other: _____	
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Name of Court Reporter: _____																	
<input type="checkbox"/> Other: _____																	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____																
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____																	

FILED
 HORRY COUNTY
 2013 JUL 16 PM 4:44
 MELANIE HUGHES - MARRO
 CLERK OF COURT


STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CIVIL ACTION NO. 2011-CP-26-4800

Becki Lynette West,)
)
) Plaintiff,)
)
) vs.)
)
) Luck Avenue Properties, Inc. a/k/a)
) Luck Avenue Properties, LLC.)
)
) Defendant.)

Notice of Motion and Motion to Reopen

FILED
HORRY COUNTY
2013 JUL 16 PM 4:14
MELANIE HUGGINS-MARDO
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse in Conway, South Carolina on the tenth (10th) day after service hereof or as soon thereafter as the parties might be heard for an order restoring the above captioned case to the docket. This Motion is made pursuant to Rule 40(j) South Carolina Rules of Civil Procedure.


KEVIN M. HUGHES
Attorney for Plaintiff
P.O. Box 3940
North Myrtle Beach, SC 29582
(843) 249-7932

Date: 7/16/13

North Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
BECKI LYNETTE WEST)
)
 Plaintiff(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET
2011 CP 26 - 4800

vs.)
)
LUCK AVENUE PROPERTIES, INC. a/k/a)
LUCK AVENUE PROPERTIES, LLC)
 Defendant(s))

(Please Print)
 Submitted By: Kevin M. Hughes
 Address: P.O. Box 3940
North Myrtle Beach, SC 29582

SC Bar #: 15974
 Telephone #: (843) 249-7932
 Fax #: (843) 249-4694
 Other:
 E-mail: khugheslaw@aol.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

- *If Action is Judgment/Settlement do not complete
- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|--|--|
| <input type="checkbox"/> Contracts | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Assault/Slander/Label (300) | <input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # _____ | <input checked="" type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20____CP_____ | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice of File Med/Mal (250) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |

- | | | | |
|--|---|---|--|
| <input type="checkbox"/> Inmate Petitions | <input type="checkbox"/> Judgments/Settlements | <input type="checkbox"/> Administrative Law Relief | <input type="checkbox"/> Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Reinstate Driver's License (800) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Transcript Judgment (740) | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> SCDOT (950) |
| | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Worker's Comp (960) |
| | <input type="checkbox"/> Other (799) | | <input type="checkbox"/> Zoning Board (970) |
| <input type="checkbox"/> Special/Complex | <input type="checkbox"/> Other | | <input type="checkbox"/> Public Service Commission (990) |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (630) | | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) | | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Out-of State Depositions (650) | | |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (660) | | |
| | <input type="checkbox"/> Sexual Predator (610) | | |

Submitting Party Signature: [Signature] Date: 6/6/11

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-26- 4800

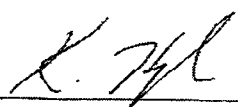
Becki Lynette West,)
)
Plaintiff,)
)
vs.)
)
Luck Avenue Properties, Inc. a/k/a)
Luck Avenue Properties. LLC.)
)
Defendant.)
_____)

SUMMONS
(Jury Trial Demanded)

2011 JUN -6 PM 4:55
MELANIE HUGGINS-WARD
CLERK OF COURT
Horry COUNTY

TO: THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which is being served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office at 1087-2 Redi Mix Road, Little River, SC 29566, (**mailing address: P.O. Box 3940, North Myrtle Beach, South Carolina 29582**) within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.



KEVIN M. HUGHES
Attorney for Plaintiff
P.O. Box 3940
North Myrtle Beach, SC 29582
(843) 399-7932

June 6, 2011
North Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-26-4800

Becki Lynette West,)
)
Plaintiff,)
)
vs.)
)
Luck Avenue Properties, Inc. a/k/a)
Luck Avenue Properties, LLC.)
)
Defendant.)
_____)

COMPLAINT
(Jury Trial Demanded)

2011 JUN -6 PM 4: 55
ELANIE HUGGINS-WARD
CLERK OF COURT
HORRY COUNTY

The Plaintiff, complaining of the Defendant, alleges the following:

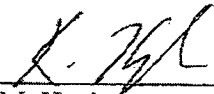
1. Plaintiff is a resident and citizen Horry County, South Carolina. Defendant is a Corporation duly organized pursuant to the laws of South Carolina, and doing business in Horry County South Carolina. The incident which is the subject matter of this cause of action occurred in Horry County, South Carolina.
2. This Honorable Court has jurisdiction over the parties and subject matter hereto.
3. Plaintiff will show that on or about June 8, 2008, she was a guest at Unit 11, in an apartment building owned and operated by the Defendant located at Luck Avenue in Little River, South Carolina. Plaintiff was walking down the stairs outside the unit and tripped on an uneven piece of pavement located at the bottom of the stairs. Plaintiff will show that the uneven pavement was a hazardous condition.
4. Plaintiff will show that Defendant had a duty to the Plaintiff to make sure that the pavement outside its units is reasonably safe.
5. Plaintiff will show that Defendant negligently, recklessly, willfully, wantonly, intentionally, and in a gross negligent manner breached its duty to the Plaintiff on the premises in the following particulars, to wit:

- a. In failing to routinely inspect the condition of the Pavement outside of the units;
- b. In failing to repair damaged or unsafe portions of the pavement;
- c. In failing to maintain the pavement in a reasonably safe condition;

6. Plaintiff will show that as a direct and proximate result of Defendant's negligent, reckless, willful, wanton, intentional and gross negligent breach of its duty. Plaintiff has suffered serious physical injury and has incurred medical expenses and has experienced pain and suffering. Plaintiff therefore requests judgment against Defendant for actual damages in a sum to be determined by a Court and Jury.

WHEREFORE, Plaintiff prays as follows:

- a. For judgment against Defendant for actual damages;
- b. For the costs and disbursements incurred in the pursuit of this matter; and
- c. For such other and further relief as this Honorable Court may deem just and proper.



Kevin M. Hughes
Attorney for Plaintiff
P.O. Box 3940
North Myrtle Beach, SC 29582
(843) 249-7932

Date 6/6/11

North Myrtle Beach, South Carolina

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2011-DR-26-0484

3 -----
4 B E F O R E: The Honorable Larry B. Hyman
5 October 1, 2013
6 -----

7 BECKI LYNETTE WEST,

 ORIGINAL

8 Plaintiff,

9 vs.

10 LUCK AVENUE PROPERTIES, INC., a/k/a LUCK AVENUE
11 PROPERTIES, LLC,

12 Defendant.
13 -----

14 APPEARANCES:

15 Kevin M. Hughes, Esq.
16 For the Plaintiff.

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18 Christopher H. Pearce, Esq.
19 For the Defendant.
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P R O C E E D I N G S

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THE COURT: Is this your motion, Mr. Hughes?

MR. HUGHES: This is my motion. This matter was stricken pursuant to a consent order of the parties, and the order to strike it was filed on July 16, 2012.

THE COURT: Was it a 40(j)?

MR. HUGHES: Yeah, it was 40(j).

THE COURT: And now you've moved to restore, and Mr. Pearce won't agree? You are the most cantankerous fellow I've ever seen, Mr. Pearce (laughing).

MR. PEARCE: Your Honor, I represent Luck Avenue Properties, the defendant. The issue is this case was originally filed in 2011 on the eve of the statute, and it was an incident that occurred on June 8, 2008. The order entered by Judge John on July 16, 2012 was a consent order on our motion to sanction and striking the case pursuant to Rule 40(j). There is more history than a standard 40(j).

On July 16th of this year, Mr. Hughes moved to restore. Clearly, that is not within the one year that he had to restore the case and protect --

THE COURT: Tell me about that, Mr. Hughes. Under what circumstances may you move after the passage of a year?

1 MR. HUGHES: My understanding is that the
2 case was stricken on July 16th.

3 THE COURT: It says here July 13th, signing
4 of the order.

5 MR. HUGHES: I was going off of the date it
6 was filed with the court.

7 THE COURT: The day it was recorded? I don't
8 know.

9 MR. HUGHES: Since -- if it was filed on the
10 16th, I filed it on the 16th of July, and I believe
11 it is one year from the date of filing.

12 THE COURT: What does the rule say? Bring up
13 Rule 40(j) for me, if you can.

14 MR. PEARCE: The rule basically says, if you
15 look at Maxwell versus Deniz, 356 S.C. 617, the Court
16 has said that a party may move after a year to restore
17 the case. They can do that, but they lose their right
18 to the -- the tolling provisions of the statute at that
19 point, and the opposing party or other party has an
20 absolute statute of limitations defense.

21 THE COURT: Here is the language, that if a
22 claim is restored -- I'm reading from the rule itself --
23 that if the claim is restored upon motion made within
24 one year of date stricken -- not date recorded, date
25 stricken -- the statute of limitations shall be tolled

1 as to all consenting parties during the time the case is
2 stricken, and any unexpired portion of the statute of
3 limitations on the date the case was stricken shall
4 remain and begin to run on the date that the claim is
5 restored.

6 Now, what does that mean? In my mind, it
7 means that if you have it restored, you still have some
8 statute time, do you not?

9 MR. PEARCE: This case was originally filed
10 on the eve of the statute. Your Honor, let me be clear.
11 This case today is five years, three months and 23 days
12 old as of today.

13 THE COURT: You should have been an
14 accountant, Mr. Pearce.

15 MR. PEARCE: Well, our position is that if
16 the Court elects to restore the case, which in its
17 discretion it may, I guess, under its --

18 THE COURT: You would have the right to amend
19 and allege the affirmative defense of statute of
20 limitations.

21 MR. PEARCE: We're going to move to dismiss
22 the case, is what we're going to do.

23 THE COURT: Okay. Tell me about that,
24 Mr. Hughes.

25 MR. HUGHES: Judge, about the deed stricken,

1 or deed filed?

2 THE COURT: Well, I believe that the rule
3 allows for me to restore the case after the year, but
4 that the statute is only tolled as to consenting parties
5 during the time the case was stricken, and any unexpired
6 portion of the statute of limitations on the date the
7 case was stricken shall remain and begin to run on the
8 date the claim was restored.

9 Now, if Mr. Pearce tells me that your action
10 was filed on the eve of the statute, the statute has
11 clearly run. Is that your position?

12 MR. PEARCE: That's correct.

13 THE COURT: And unless I restore it within
14 one year of the date that it was stricken, you have a
15 problem with the statute of limitations. Doesn't that
16 seem to be the rule? Can you point me to something that
17 would indicate that the rule is otherwise? I'll be
18 happy to look at it.

19 MR. HUGHES: Judge, I can. I don't know
20 about -- if the case is restored upon motion made within
21 one year to be stricken, not restored within one year.

22 THE COURT: I agree with you there. If you
23 filed your motion within one year of the date it was
24 stricken. But I think the day it was stricken is the
25 day that Judge John signed his order, the consent order,

1 and it is July 13, 2012. That is the date that it was
2 stricken, the date that the judge signed the order, not
3 the date it was filed.

4 My understanding, and I may be wrong, but
5 what I picked up from Mr. Pearce is that by the time
6 that was done, the action was, in fact, time barred or
7 -- let me change that. The statute had run. I would
8 assume that some time had passed from the time it was
9 filed, right? You said it was filed on the eve of the
10 statute, right?

11 MR. PEARCE: The filing of the actual
12 complaint was filed -- my copy is hard to read, but the
13 incident occurred on June 8, 2006, and I think the
14 actual complaint was filed on June 6, 2011, so two days
15 before the statute ran originally on the complaint.

16 THE COURT: So from what I understand of
17 that, at the time that the action was struck, there was
18 no time left on the statute, and it was tolled during
19 the year. If you had refiled -- or made a motion to
20 have it restored any time during that year, there would
21 have been no statute of limitations problem. After a
22 year, you can only use that portion of the statute that
23 was not tolled, and to hold otherwise would make this
24 part of the rule that says the statute of limitations
25 shall be tolled as to all consenting parties during the

1 time the case is stricken, and any unexpired portion of
2 the statute of limitations on the date the case was
3 stricken shall remain and begin to run on the date that
4 the claim is restored.

5 So there was none left on the date that it
6 was stricken, is that correct, no time left on that
7 date? To hold otherwise would just make that portion of
8 the rule meaningless. I think Mr. Hughes, he is
9 entitled -- I think you can file it, but he certainly is
10 going to have a defense of the statute of limitations.

11 I'm going to deny the motion to restore. Mr.
12 Pearce, you do an order.

13 MR. PEARCE: I will. Thank you.

14 THE COURT: Mr. Pearce, set out findings and
15 conclusions of law in your order citing the rule and the
16 language we've been discussing.

17 MR. PEARCE: I will do that. Thank you.

18 (Whereupon, the proceedings concluded.)

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CERTIFICATE OF REPORTER

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STATE OF SOUTH CAROLINA

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COUNTY OF HORRY

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I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true and accurate Transcript of Record of the proceedings captioned on the 1st day of October, 2013.

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13

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

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December 14, 2013

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Natalie Dahl, RPR

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Court Reporter

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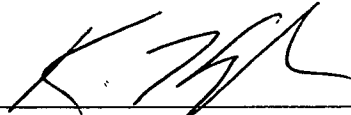
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CERTIFICATE OF COUNSEL

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

May 2, 2014



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
COURT OF COMMON PLEAS

The Honorable Larry B. Hyman, Circuit Court Judge

Case No. 2011-CP-26-4800
Appellate Case No. 2013-002602

Becky Lynette West, Appellant.

v.

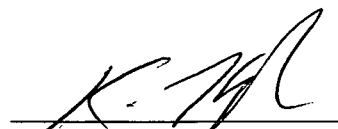
Luck Avenue Properties, Inc. Respondent.

PROOF OF SERVICE

I certify that I have served a Bound copy of the Record on Appeal on Christopher H. Pearce, Attorney for Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 6, 2014, addressed as follows:

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SC Court of Appeals