

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP3203740

Pitt Stop 5	Bob Brandi Stations Inc	SLED
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <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), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  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; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk:

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JUN 20 2014

SC Court of Appeals

**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 amounts 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.**

	2154	7/3/2013
<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>

**For Clerk of Court Office Use Only**

This judgment was entered on **n/a**, and a copy mailed first class or placed in the appropriate attorney's box on **3rd day of July 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

**S. Jahue Moore** PO Box 5709 West Columbia, SC 29171

**Adam L Whitsett** PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

Beth A. Carrigg - Clerk of Court

**Court Reporter**

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  
COUNTY OF LEXINGTON ) FOR THE ELEVENTH JUDICIAL CIRCUIT

Pitt Stop 5 / Bob Brandi Stations, Inc., ) C.A. No.: 2012-CP-32-03740

Appellant, )  
LEXINGTON, SC )

vs. )

**ORDER REMANDING CASE  
TO MAGISTRATE'S COURT**

SLED, )

Respondent. )

This case involves a question of legality in regard to various video sweepstakes games. The issue of legality of sweepstakes is a matter of the legitimate debate. Due to the Court's ruling on the venue issue, I need not pass on the legality issue. The matter was heard before me at the Lexington County Courthouse in Lexington, South Carolina. Both parties were ably represented by counsel.

There are a number of issues presented to the Court for its consideration. At this point, the Court need concern itself only with the question related to change of venue.

Based on the record, SLED seized various video sweepstakes games and took them to the local magistrate. The matter was scheduled to be heard before the local magistrate who is Rebecca Adams.

Unbeknownst to the Plaintiff/Appellant, prior to the hearing, Judge Adams recused herself. When the Plaintiff/Appellant appeared for trial it was learned the case had been reassigned to Judge Scott Whittle.

The Plaintiff/Appellant knew nothing of the recusal or the reassignment prior to appearing in Court. The Plaintiff/Appellant objected to Judge Whittle hearing the case and made a motion for change of venue.

The Court allowed the motion for change of venue to be heard and allowed the presentation of evidence in regard to the requested change of venue instead of accepting an affidavit. It was entirely proper for the Court to have accepted testimony in this regard as there was no way the motion to change venue could have been made before the Plaintiff/Appellant learned of the recusal and the assignment of Judge Whittle to hear the matter.

In support of the motion to change venue, the owner of the Plaintiff corporation testified he did not believe he could receive a fair trial before Judge Whittle. On the stand, the owner of the Plaintiff corporation gave a number of reasons as to why he did not believe he could receive a fair trial in front of Judge Whittle. In short, Mr. Brandi described a number of reasons as to why he felt he could not receive a fair trial in front of Judge Whittle. S.C. Code § 22-3-920 is a special venue section dealing with magistrates. It reads as follows:

“Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days’ notice that he intends to apply for a change of venue or (b) prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate’s district in the same county. One such transfer only shall be allowed each party in any case.” (emphasis added)

When a motion to change venue is made pursuant to S.C. Code § 22-3-920, the question is not whether or not the magistrate can be fair. The question is simply one as to whether or not the applicant has stated reasons why he believes he cannot receive a fair trial.

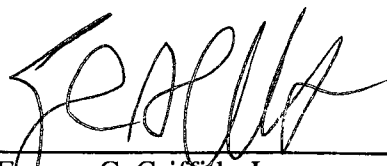
If the party presents sworn testimony that he does not believe he can receive a fair trial and if the party provides any fact whatsoever to justify such a belief, a change of venue is mandatory. *State v. Conkle*, 64 S.C. 371, 42 S.E. 173 (1902); *Brown v. Kolb*, 92 S.C. 309, 75

S.E. 529 (1912). Our Court has held it is reversible error of law to proceed with trial once an individual has sworn he does not believe he can receive a fair trial before a particular magistrate. *Whitte v. Cave*, 73 S.C. 15, 52 S.E. 736 (1905). There is no question but that the affidavit or testimony must state reasons why a fair trial cannot be had. *Bacot v. D's*, 67 S.C. 245, 45 S.E. 171 (1903). In this case there is no question but that numerous reasons were given by the owner of the Plaintiff/Appellant as to why he believed he could not receive a fair trial.

Based on the foregoing, I find and conclude it was error for the magistrate to have proceeded to trial on this case in light of the motion to change venue. Thus, the other issues raised on appeal need not be considered. This matter should be remanded to the Magistrate's Court and venue should be transferred to the nearest magistrate not disqualified from hearing the cause within the county.

Based on the foregoing, the decision of the Magistrate's Court in this matter is hereby reversed. The matter is hereby remanded to the Magistrate's Court for Lexington County. Judge Whittle is hereby directed to transfer venue to the nearest magistrate not disqualified from hearing the case within Lexington County.

AND IT IS SO ORDERED.



Eugene C. Griffith, Jr.  
Judge for the Eleventh Judicial Circuit

Newberry, South Carolina.

July 1<sup>st</sup>, 2013

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CLERK OF COURT  
LEXINGTON, SC

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP 32 03740

Pitt Stop 5 / Bob Brandi Stations, Inc. -SLED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court	Attorney for : Plaintiff	Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

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- 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 (formal order to follow)  Statement of Judgment by the Court: *Defendant's motion to reconsider is respectfully denied*

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk : The motion to reconsider is respectfully denied.

INFORMATION FOR THE PUBLIC 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)
		\$
		\$
		\$

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*[Signature]*  
Circuit Court Judge

2154  
Judge Code

1-22-14  
Date

**For Clerk of Court Office Use Only**

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

S. Jahue Moore

Adam L. Whitsett

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Beth Carnigg / mh  
**CLERK OF COURT**

**Court Reporter:**

CLERK OF COURT  
LEWISBURG, SC  
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