

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar Warren Dickson, Circuit Court Judge

Case No. 2008-CP-18-0821

Beneficial South Carolina, Inc.,

Respondent,

Melissa Vessell f/k/a Melissa
K. Strange and George Vessell,

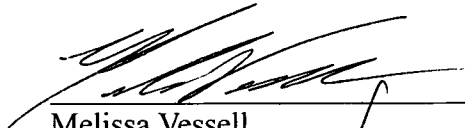
Appellants.

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SC Court of Appeals

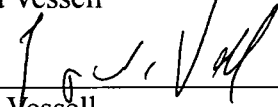
NOTICE OF APPEAL

Melissa Vessell and George Vessell appeal the order of the Honorable Edgar Warren Dickson dated March 22, 2012. Appellants received written notice of entry of these orders on March 30, 2012.

April 27, 2012



Melissa Vessell



George Vessell
222 Runnymede Lane
Summerville, SC 29485
(843) 751-9550
email: strangervessell@aol.com

Other Counsel of Record:
John Judson Hearn
Rogers Townsend & Thomas PC
P.O. Box 100200
Columbia SC 29211
(803) 744-4444

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
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Edgar Warren Dickson, Circuit Court Judge

Case No. 2008-CP-18-0821

Beneficial South Carolina, Inc.,

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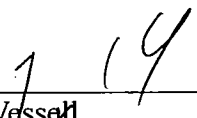
Melissa Vessell f/k/a Melissa
K. Strange and George Vessell,

Appellants.

PROOF OF SERVICE

I certify that I served the Notice of Appeal on Beneficial South Carolina, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on April 27, 2012, addressed to its attorney of record, John Judson Hearn, Rogers Townsend & Thomas PC, P.O. Box 100200, Columbia, SC 29211.

April 27, 2012



George Vessell
222 Runnymede Lane
Summerville, SC 29485
(843) 751-9550
email: strangervessell@aol.com

April 27, 2012

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211


RE: Beneficial South Carolina, Inc. Respondent, v. Melissa Vessell f/k/a Melissa K. Strange and George Vessell, Appellants, Case No. 2008-CP-18-0821

Dear Ms. Gee:

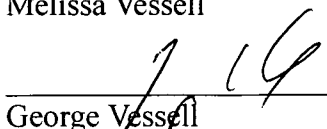
Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the respondent
- (2) A copy of the order which is to be challenged on appeal.
- (3) A filing fee of \$100.

Sincerely,



Melissa Vessell



George Vessell
222 Runnymede Lane
Summerville, SC 29485
email: strangervessell@aol.com

cc:
John Judson Hearn
Rogers Townsend & Thomas PC
P.O. Box 100200
Columbia, SC 29211
(803) 744-4444

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SC Court of Appeals

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For Domestic and International Use

Melissa Vessell
George Vessell
222 Runnymede Lane
Summerville, SC 29485

The Honorable Tanya A. Gee
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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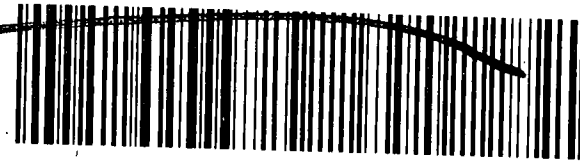
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COLUMBIA SC 29221



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**LETTER TO CLERK OF LOWER COURT
FILING NOTICE OF APPEAL**

April 27, 2012

The Honorable Cheryl Graham
Clerk of Court for Dorchester County
5200 East Bilton Blvd
St. George SC 29477

RE: Beneficial South Carolina, Inc. Respondent, v. Melissa Vessell f/k/a Melissa K. Strange and George Vessell, Appellants, Case No. 2008-CP-18-0821


Dear Ms. Graham:

Enclosed is a notice of appeal in the above case. Please forward a clocked copy to Judge Dickson.

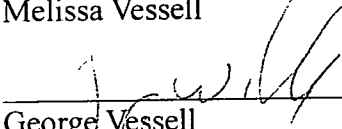
Please be advised that Mrs. Vessell has returned from military service in Germany and resides again at 222 Runnymede Lane, Summerville, SC 29485.

Please provide me the name and address of the court reporter for the October 21, 2011 hearing (Orangeburg) so that I may order a hearing transcript. Thank you.

Sincerely,



Melissa Vessell



George Vessell
222 Runnymede Lane
Summerville, SC 29485
email: strangervessell@aol.com

cc: John Judson Hearn
220 Executive Center Drive, Suite 109
Columbia, SC 29211
(803) 744-4444
Attorney for Respondent

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MAY 07 2012
SC Court of Appeals

**LETTER TO CLERK OF LOWER COURT
FILING NOTICE OF APPEAL**

April 27, 2012

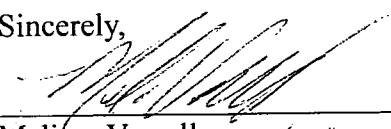
Mr. John Judson Hearn
Rogers Townsend & Thomas, PC
P.O. Box 100200 Columbia, SC 29211

**RE: Beneficial South Carolina, Inc. Respondent, v. Melissa Vessell f/k/a Melissa K. Strange and
George Vessell, Appellants, Case No. 2008-CP-18-0821**

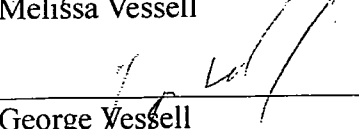
Dear Mr. Hearn:

Enclosed is a notice of appeal in the above case.

Sincerely,



Melissa Vessell



George Vessell
222 Runnymede Lane
Summerville, SC 29485
email: strangervessell@aol.com

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MAY 07 2012
SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP1800821

CERTIFIED COPY
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SC COURT OF APPEALS

Beneficial South Carolina,
Inc

Cheryl...
CLERK OF COURT
DORCHESTER COUNTY

Melissa Vessell
George Vessell
Melissa K. Strange
King's Grant Homeowners Association, Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: **John Hern**

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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.
- 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; (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:

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)

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.**

Edgar Dickson
Circuit Court Judge

2153
Judge Code

3/29/2012
Date

For Clerk of Court Office Use Only

This judgment was entered on 3/28/2012, and a copy mailed first class or placed in the appropriate attorney's box on 3/28/2012, to attorneys of record or to parties (when appearing pro se) as follows:

John Judson Hearn Rogers Townsend & Thomas, PC P.O.
Box 100200 Columbia, SC 29202-3200

ATTORNEY(S) FOR THE PLAINTIFF(S)

George Vessell 222 Runnymede Ln Summerville, SC 29485
Melissa Vessell Cmr 402 Box 2621 APO, AE 09180

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Beneficial South Carolina, Inc.,

Plaintiff,

vs.

Melissa Vessell f/k/a Melissa K. Strange,
George Vessell, and King's Grant Homeowners
Association, Inc.,

Defendants.

(513057-00271 JJH)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2008-CP-18-0821

ORDER

2012 MAR 29
CERTIFIED COPY
CLERK OF COURT
DIRECTOR OF COURT

This matter came before me October 21, 2011, pursuant to an order so instructing issued October 28, 2010 from the South Carolina Court of Appeals¹, where an appeal of this matter is currently pending. Present for Plaintiff was John J. Hearn, Esquire; defendant George Vessell appeared pro se.

The issues before this Court are:

- whether Melissa Vessel ("Mrs. Vessell") is entitled to the appointment of counsel under the Servicemembers Civil Relief Act ("SCRA") pursuant to 50 USC App. § 522;

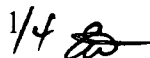
¹ In pertinent part, the Court of Appeals order reads:

Respondent filed a motion to appoint counsel for Appellant Melissa Vessell and to dismiss the appeal. Respondent maintains Melissa Vessell is currently on active duty and therefore entitled to counsel. Further, Respondent contends this appeal is moot because the Master-in-Equity has subsequently vacated the order of reference and recused himself from this matter.

The motion did not explain the exact facts leading up to the Master's decision to vacate his order and no return was filed. Because this case was on appeal, we do not believe the Master could actually vacate his order, particularly because he has a disqualification. See Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 112, 576 S.E.2d 191, 197 (Ct. App. 2003) (finding a court "generally lose[s] subject matter jurisdiction of a case when a notice of appeal is filed and served").

Because it appears the question has arisen that perhaps Appellant is entitled in the circuit court to the relief sought on appeal, we remand this case to the Chief Administrative Judge for the First Circuit to determine whether Appellant is entitled to counsel and we grant the Chief Administrative Judge leave to vacate the order of reference and to determine the status of the case. The appeal will be held in abeyance pending the order of the Chief Administrative Judge.

Order of the South Carolina Court of Appeals, October 28, 2010.


1/4 

- whether these proceedings should be stayed; and
- whether the order of reference vacated by Judge Watts should remain vacated and if so, the affect of that action on the pending appeal.

After due deliberation, review of the memoranda, case law, exhibits and argument of counsel, the court finds that Mrs. Vessel is not entitled to the appointment of counsel because she has not applied for an initial stay, nor has there been a denial of her application for an additional stay—and thus has not met the two SCRA prerequisites for the appointment of counsel by the court. Additionally, this action should not be stayed, as Mrs. Vessel is not entitled to—nor has she sought—a stay of these proceedings. The court further finds that the order of reference should remain vacated, thus mooting the appeal and leaving the parties in the position they were in following the filing of the initial pleadings by Plaintiff and the Vessels.

There are two provisions under the SCRA that address the appointment of counsel. The much broader provision only applies in cases “in which the defendant does not make an appearance.” 50 U.S.C. § 521. In the present case, Plaintiff filed its Lis Pendens, Summons and Complaint on March 28, 2008. Mr. and Mrs. Vessel served their Answer on April 26, 2008. The Vessels then served an Amended Answer on May 23, 2008. Thus, by virtue of signing both the Answer and Amended Answer, Mrs. Vessel has made an appearance in this case. Therefore, § 521 is not applicable in the present case.

The only possible avenue for the appointment of counsel would be through 50 U.S.C. §522. Section 522 allows the court to grant a stay in “any civil action or proceeding” in which the servicemember has received notice. The court may grant a stay on its own motion. The question of whether a stay is warranted is within the sound discretion of the trial court. *Hibbard v. Hibbard*, 431 N.W.2d 637, 639 (Neb. 1988). Under this section, a servicemember may

2/4 

request a 90-day stay at any stage before the entry of a final judgment. § 522(b)(1). In order to obtain the stay, however, the servicemember must satisfy several conditions. First, the servicemember must communicate why their current military duty “materially affect[s]” their ability to appear and a date when they will be available to appear. Further, the servicemember must present a “letter or other communication” from their commanding officer that states that military duty prevents the servicemember’s appearance and that military leave is not allowed at the time of the communication. § 522(b)(2). If those conditions are met, then the court must stay the action for at least 90 days. § 522(b)(1). A servicemember may request an additional stay “based on continuing material affect of military duty” under § 522(d). The servicemember must put forth the same required information that forms the basis for the initial 90-day stay. § 522(d)(1). A servicemember is only entitled to the appointment of counsel if the court “refuses to grant an additional stay of proceedings.” § 522(d)(2).

The mere presence of military service does not entitle a servicemember to a stay. The threshold showing is a material effect. *Hibbard*, 431 N.W.2d at 639. In the present case, Mrs. Vessel has not made an application for a stay under § 522, and by definition, she has not requested an additional stay under § 522(d)(2). On the contrary, Mrs. Vessell has affirmatively elected to appear and to proceed *pro se* in this matter for over three years; she has never applied for a stay nor requested counsel. Accordingly, this court should not and does not appoint counsel for her at this time.

Finally, I find that Judge Watts’ attempt to vacate the order of reference, though made in good faith, was ineffective. This case was on appeal at the time of Judge Watts order; he had no jurisdiction to take that action. *See Gattis v. Murrells Inlet VFW No. 10420,353 S.C. 100, 112, 576 S.E.2d 191, 197 (Ct. App. 2003)* (courts “generally lose subject matter jurisdiction of a case

3/4 20

when a notice of appeal is filed and served"). Nevertheless, out of an abundance of caution and to afford the Vessells a full and fair opportunity to defend this action, this court believes the order of reference should be vacated, and so orders. The parties are therefore restored to the position they were in as of May 12, 2008, the date of the order of reference. The Vessells shall be allowed thirty days from the date of entry of this order to file any amended pleadings without further leave of this court.

This order, once filed in Dorchester County, shall be served on the Court of Appeals with my recommendation that the appellate court issue an order dismissing the pending appeal as moot. The order shall likewise be served on Melissa Vessell via United States Postal Service Priority Mail at the following address:

Melissa Vessell
CMR 402
Box 2621
APO AE 09180

And it is so ordered.



Hon. Edgar Warren Dickson
First Judicial Circuit

3/22/12

Date

4/4 

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 2008-CP-18-0821

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon the *pro se* defendants by U.S. Mail, postage prepaid, on March 26, 2012, at the following addresses:

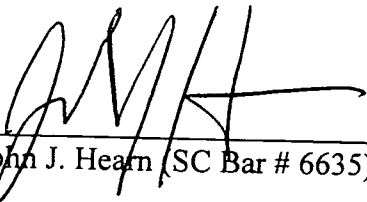
Document Served:

Order

Pro Se Defendants Served:

George Vessell
222 Runnymede Lane
Summerville, SC 29485

Melissa Vessell
CMR 402
Box 2621
APO AE 09180



John J. Hearn (SC Bar # 6635)