

RECEIVED

NOV 19 2013

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

Appeal from Berkeley County
Court of Commons Pleas

The Honorable Kristi L. Harrington

Case. No. 2013-000457

Nancy Schaffer Turner, as Personal Representative
of the Estate of Martha L. Schaffer.....Appellant

v.

Susan Linda Schaffer Sawadske.....Respondent

REQUEST FOR ENTRY OF DEFAULT JUDGMENT

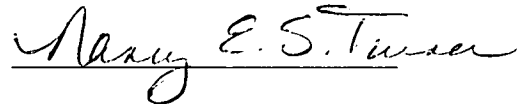
Plaintiffs' moves this court for judgment by default in the action, and show that the complaint in the above case was filed in court January 7, 2011. Respondent was not in military services and is not under 18 and is not incompetent. The respondent did not answer or appear. The summons and complaint were duly serviced by publication 4-27-2011, 5-4-11 and 5-11-11 in the *James Island Messenger*, no answer or other defense has been filed by the Appellant.

Appellant moves that this court make and enter a judgment to set aside the deed recorded in the State of South Carolina, County of Charleston Book H 281, Page 543 all that lot, piece or parcel of land situate, lying and being Folly Beach, County of Charleston, known and designated as lot 202.

Return the profit to Martha Schaffers' estate from the sale of 4272 Persimmon Wood Drive, North Charleston, South Carolina, exceeds \$200,000.00 two hundred thousand dollars.

Return of personal property to include but not limited to yearbooks from Wallace Middle School and Middleton High School, collection of Austin sculptures, classic Barbie and classic Barbie clothes, the family Bible, Le Creuset cookware number 30 and number 24 appellants' sons' infant clothes, and collection of Mercury dimes and silver dollar, plaintiff cost, and further relief the Court may deem just and proper.

Respectfully submitted,



Pro Se Nancy E. S. Turner

Nov - 9 - 2013

I certify that I have served the Motion for Default Judgment by depositing a copy of it return receipt requested, in the United States Mail, postage prepaid, on November 9, 2013 addressed to Hart Hyland Shepherd, LLC, Post Office Box 130, Summerville, SC 29484, attorney for the Respondent.

RESPONDENT FAILED TO TIMELY FILE HER ANSWER FROM THE CIRCUIT COURT, AND THE APPEALANT ASKS TO BE AWARD WHAT SHE ASKED THE COURT IN THE PETITION.

FACTS

This matter arises from a summons dated Dec. 30, 2010, received and filed by Probate Court, Berkeley County, S.C. Jan. 7, 2011 (attached as Exhibit 1). Nancy Turner, the Petitioner vs. Susan Sawadske, the Respondent. The summons was eventually returned unopened to the Petitioner via the certified mail (attached as Exhibit 2). Falcon Express Services, LLC then attempted to deliver the summons. After several attempts the summons was returned with an Affidavit of Non-Service (attached as Exhibit 3). The Petitioner, with the approval of Judge Keith W. Kornahrens, through a Motion for Service by Publication, dated 29 March 2011,(attached as Exhibit 4) then published the summons in *The James Island Messenger*. The Respondent did not answer the summons, petition. The Petitioner not the Respondent, went before the Honorable Judge Kornaherns he ordered on July 16, 2011 (attached as Exhibit 5) the petitioner was entitled to her personal property if she could locate such property, the Petitioner be appointed Personal Representative, and barred the Folly Beach deed from being set aside due to statue of limitation. The Petitioner, Nancy S. Turner then filed a Notice of Appeal dated July 18, 2011 and a Proof of Service for the Notice of Appeal also dated July, 18, 2011 to Susan Sawadske, the Respondent. The Appeal was in front of The Honorable Kristi L. Harrington December 3, 2012. Again the Respondent did not go before the court as referred to in the transcript of that hearing on page 5 (attached as Exhibit 6). The Honorable Kristi L. Harrington concurred with The Honorable Judge Kornahern (attached as Exhibit 7). The Petitioner then filed a Notice of Appeal to The South Carolina Court of Appeals on February 25, 2013. The Respondent filed a motion to dismiss June 10, 2013 the Petitioner did not receive a copy of this

motion. That motion was denied filed in the Courts August 12, 2013. The Respondent then filed for a 30 day extension (attached as Exhibit 8), the Petitioner did not receive a copy of the 30 day extension from the Respondent. Instead of asking for an additional extension the Respondent sent in to the courts an Amended Certificate of Service certifying the Respondent served a Motion to Dismiss Appeal, dated October 24, 2013 (attached as Exhibit 9). The Petitioner received a single piece of paper entitled “ Amended Certificate of Service”. If the Amended Certificate of Service had been an asking for a second extension it still would have been beyond the original 30 day extension. Plaintiffs’ moves this court for judgment by default in the case.

November 9, 2013

Nancy E. S. Turner

Pro Se

Fundamentally, an answer is "[t]he response of a defendant to the plaintiff's complaint, denying in part or in whole the allegations made by the plaintiff." Black's Law Dictionary 91 (6th ed. 1991). In form, an answer "shall state in short and plain terms the facts constituting his defenses to each cause of action asserted and shall admit or deny the averments upon which the adverse party relies." Rule 8(b), SCRPC. Furthermore, each denial "shall fairly meet the substance of the averments denied." Id. Where the defendant "is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial." Id. As with all pleadings, an answer "shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRPC.

"[A] plaintiff need only show compliance with the rules." Roche v. Young Bros., Inc., 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). When the rules are followed, it is presumed that service was proper. Id. It is undisputed that the respondents sent the summons and complaint via certified mail with return receipt and published in the *James Island Messenger*.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided. This Rule 8(d) is simply a restatement of Code § 15-13-80.

RULE 55 DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

A determination in this case requires an evaluation of Rule 55, SCRPC regarding default judgments. When interpreting a court rule, "we apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning.

Rule 1, SCRPC (providing the rules of civil procedure are to be construed to secure the just, speedy and inexpensive determination of every action).

Rule 208(a)(4), SCACR, provides in part: "Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." Such action may include reversal. Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981); Robinson v. Hassiotis, 364 S.C. 92, 93 n.2, 610 S.E.2d 858, 859 n.2 (Ct. App. 2005); see also Wierszewski v. Tokarick, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) (stating where respondent failed to file a brief, "it [was] proper to reverse on the points presented rather than to search the record for reasons to affirm").

Exhibit 1

Certified True and Correct Copy
of Original Record

Keith W. Kornahrens
Keith W. Kornahrens, Judge of Probate
Berkeley County, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE PROBATE COURT

CASE NO.: 2001-ES-08-000411

IN THE MATTER OF THE ESTATE
FOR Martha L. Schaffer

Nancy Elizabeth Schaffer
Turner

Petitioner(s),

vs.

Susan Linda Schaffer
Sawadske

Respondent(s).

2011-CP-08-2315

SUMMONS

CLERK OF COURT
BERKELEY COUNTY, SC

2011 AUG 24 AM 9:29

TO THE RESPONDENTS LISTED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this
action, a copy of which is herewith served upon you, and to serve a copy of your
Answer upon the Petitioner(s) listed above at the following address(es):

Nancy E.S. Turner

(Name, PRINT)

311 Claude Phillips Rd

(Street address or mailing address, PRINT)

Bennett NC 27208

(City, State, and zip code, PRINT)

CLERK OF COURT
BERKELEY COUNTY, SC

2011 AUG 24 AM 9:48

FILED

Your Answer must be served on the Petitioner at the above address within **thirty (30)**
days after the service of this Summons and Petition upon you, exclusive of the day of
such service; and if you fail to Answer the Petition within that time, the Petitioner(s) will
ask the Court for a judgment by default for the relief demand in the Petition.

Nancy E.S. Turner
Signature of Petitioner(s)

Dec. 30, 2010
Date

31 Claude Phillips Rd
Consett NC 27208

CERTIFIED MAIL™

POST OFFICE BOX 2044



7003 1010 0001 7046 1847

APR 25 11



SEABISCUIT

Susan Sawatske
204 W. Indian Ave.

- A
- C
- S
- INSUFFICIENT ADDRESS
- ATTEMPTED NOT KNOWN
- NO SUCH NUMBER / STREET
- NOT DELIVERABLE AS ADDRESSED
- UNABLE TO FORWARD

RTS
RETURN TO SENDER

Unclaimed

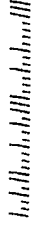


Exhibit 3

AFFIDAVIT OF NON-SERVICE

State of South Carolina

County of Berkeley

Probate Court

Case Number: 2001ES08-411-2

Plaintiff:
IN THE MATTER OF MARTHA L. EDGAR SCHAFFER

vs.

Defendant:

For:
Nancy Turner
311 Claude Phillips Road
Bennett, NC 27208

Received by FALCON EXPRESS SERVICES, LLC to be served on Susan S. Sawadske, 204 W. Indian Avenue, Folly Beach, SC 29439.

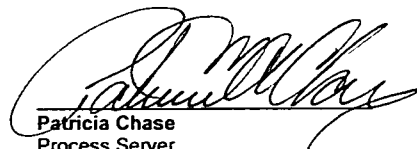
I, Patricia Chase, being duly sworn, depose and say that on the 6th day of March, 2011 at 5:08 pm, I:

NON-SERVED the APPLICATION/PETITION FOR PERSONAL REPRESENTATIVE, SUMMONS, NANCY ELIZABETH SCHAFFER TURNER VS SUSAN LINDA SCHAFFER SAWADSKA for the reason that I failed to find Susan S. Sawadske or any information to allow further search. Read the comments below for further details.

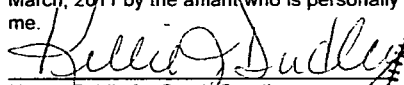
Additional Information pertaining to this Service:

I attempted service on 3/2/11 at 6:36 pm, 3/4/11 at 4:11 pm, on 3/5/11 at 8:32 pm and 3/6/11 at 5:08 pm. I was not able to locate Susan Sawadske at any of these attempts.

I certify that I am over the age of 18 and have no interest in the above action.


Patricia Chase
Process Server

Subscribed and sworn to before me on the 7th day of March, 2011 by the affiant who is personally known to me.


Kellie Dudley
Notary Public for South Carolina
My Commission Expires: 10/13/2019



FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696
Out Job Serial Number: 2011000322

Exhibit 4

Certified True and Correct Copy
of Original Record

2011 - CP - 08 - 2315

STATE OF SOUTH CAROLINA

Keith W. Kornegans

COUNTY OF: BERKELEY

Keith W. Kornegans, Judge of Probate
Berkeley County, SC

IN THE PROBATE COURT

IN THE MATTER OF: Estate of Martha L.E. Schaffer

Motion For Service By Publication

CASE NUMBER: 2001ES08-411-2

RECEIVED
2011 MAR 28 PM 2:23
PROBATE COURT
BERKELEY COUNTY
S.C.

It is represented that:

NAME	LAST KNOWN ADDRESS
Susan S. Sawadsky	204 W. Indian Ave., Folly Beach S.C. 29439

should be served by publication with the notice of the hearing on the (title of pleading) application/petition for successor personal representative, summons, petition for (nature of relief requested) compensated, property returned, remedied, named personal representative because the identity and/or address of such person(s) is/are not known and cannot be ascertained with reasonable diligence. The undersigned requests that an order be entered directing service by publication in the newspaper named James Island Messenger.

Executed this 24 day of March, 2011.

Signature: *Nancy Turner*
 Name: Nancy Turner
 Address: 311 Claude Phillips Road
Bennett N.C. 27208
 Telephone (O): 336-581-4009
 (H): _____

FILED
2011 AUG 24 AM 9:48
CLERK OF DISTRICT COURT
BERKELEY COUNTY

ORDER

IT IS HEREBY ORDERED that service be made by publication upon the persons listed on the attached motion in accordance with law.

Executed this 29th day of March, 2011

Keith W. Kornegans
Probate Court Judge

Exhibit 5

20 11 - CP - 00 - 2315

Certified True and Correct Copy
of Original Record
Keith W. Kornahrens
Keith W. Kornahrens, Judge of Probate
Berkeley County, SC

FILED

IN THE PROBATE COURT
2001 ES 08 411
2011 AUG 24 AM 9:50

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE MATTER OF THE ESTATE
OF MARTHA L. SCHAFFER

NANCY ELIZABETH SCHAFFER
TURNER,
Petitioner,
Vs.
SUSAN LINDA SCHAFFER
SAWADSKA,
Respondent.

CLERK OF COURT
BERKELEY COUNTY, SC

RECEIVED
2011 JUL 13 PM 4:42
PROBATE COURT
BERKELEY COUNTY
SC
ORDER

Petitioner filed an action in this matter on January 7, 2011. The Respondent did not answer or appear.

Petitioner seeks among other relief an Order of this Court setting aside a deed conveying property owned by decedent on Folly Beach which was conveyed to Susan Schaffer Sawadske and Mark Schaffer by deed of decedent dated March 13, 1997. Plaintiff also seeks the return of personal property which she had stored at decedent's residence and her share of the profits from the sale and assets of the estate.

Petitioner contends that the Folly Beach deed was forged by her brother, Mark Schaffer or the respondent herein. Petitioner further contends that this Court addressed this issue at a hearing on October 25, 2001. She alleges that the Court issued an order requiring actions to be taken regarding the title.

After receiving testimony, reviewing the file and the taped recording of the October 25, 2001 hearing, I make the following findings and conclusions.

I find that the alleged fraud and the issue of the validity of the deed was not before the Court on October 25, 2001 and no ruling was made regarding the same.

Based upon the uncontroverted testimony of the Petitioner, I find that she is entitled to her personal property that was stored in her mother's house and she should retrieve the same if she can locate it.

Keith W. Kornahrens
1

Based upon the uncontroverted testimony of the Petitioner, I find that she did not receive her share of the estate of her mother and she is entitled to one third of any assets that she can locate and she should be appointed Personal Representative so that she can make a diligent search for said assets.

Based upon the entire record, I find that Petitioner was informed and believed that her mother's real property had been fraudulently conveyed at the time of the October 25, 2001 hearing. I find that she took no legal action to have the deed set aside until she filed the Petition herein in January, 2011. I find that she has not only failed to establish a reason the statute of limitations should not bar her action but by her own testimony it is obvious that she knew an "alleged fraud took place" and she failed to timely bring an action against the alleged perpetrators of the fraud.

Therefore, it is

ORDERED, the Petitioner shall be entitled to her personal property which she stored at her mother's house if the same can be located and retrieved by her.

ORDERED, the Petitioner shall be appointed Personal Representative to afford her an opportunity to search for assets of decedent and if she locates and retrieves the same she shall be entitled to her share as a devisee under the will.

ORDERED, the Petitioner's cause of action to have the Folly Beach deed set aside is barred by the Statute of Limitations and same is hereby dismissed.

IT IS SO ORDERED.

July 13, 2011
Moncks Corner, SC

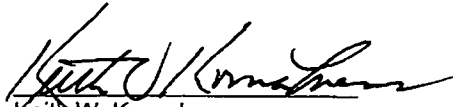

Keith W. Komahrens
Judge of Probate

Exhibit 6

5

through Ms. Sawadske ---

PLAINTIFF NANCY TURNER: Sawadske.

THE COURT: Sawadske is not here, you are the moving party and you still have the burden; do you understand that?

PLAINTIFF NANCY TURNER: Yes, ma'am.

THE COURT: All right. I'm going to go ahead and place you under oath, Ms. Turner, if you would please stand and raise your right hand.

Do you swear that the testimony you are about to give this Court is the whole truth and nothing but the truth, so help you, God?

PLAINTIFF NANCY TURNER: Yes, ma'am.

THE COURT: All right. You may have a seat. I'm going to allow you just to remain seated because the courtroom is so small.

Ms. Turner, you are appealing the ruling of Judge Kornahrens. My role here today is just to listen to you and for you to tell me what you believe that Judge Kornahrens did wrong. This is not an opportunity to re-litigate this case. Do you understand that?

PLAINTIFF NANCY TURNER: Yes, ma'am.

THE COURT: My role is only to determine if Judge Kornahrens committed an error of law; do you understand?

PLAINTIFF NANCY TURNER: Yes, ma'am.

THIS TRANSCRIPT WAS PREPARED FOR NANCY TURNER

Exhibit 7

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-08-2315

Nancy Schaffer Turner, as Personal Representative of

Susan Linda Schaffer Sawadske (Respondent)

the Estate of Martha L. Schaffer (Appellant)

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> 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: This Court affirms The Honorable Keith W. Kornahrens on all matters raised on appeal by Nancy Schaffer Turner, as Personal Representative of the Estate of Martha L. Schaffer.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

FILED
 FEB - 1 AM 10:00
 HARRY P. BUNYAK
 CLERK OF COURTS
 BERKELEY COUNTY, SC

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)
N/A	N/A	\$N/A
		\$
		\$

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

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.

2/6/13
 mail
 5255
 Probate Court

[Signature]
 Circuit Court Judge

2151
 Judge Code

2/6/13
 Date

[Handwritten mark]

Exhibit 8



Thomas H. Hart, III, P.C.
Gregory L. Hyland
Andrew T. Shepherd
Katherine H. Hyland

September 10, 2013

RECEIVED

SEP 11 2013

SC Court of Appeals

69729

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
John C. Calhoun Building
1015 Sumter Street
Columbia, SC 29201

**Re: Nancy Schaffer Turner as Personal Representative of the Estate of
Martha L. Schaffer v. Susan Linda Schaffer Sawadske
Appellate Case No.: 2013-000457**

Dear Madam Clerk:

Counsel for the Respondent respectfully requests a thirty (30) day extension to file Respondent's Initial Brief and Designation of Matter for Inclusion in the Record on Appeal. Respondent's Initial Brief and Designation of Matter for Inclusion in the Record on Appeal are currently due September 12, 2013. With the extension, the same would now be due on or before October 14, 2013 as the thirtieth day falls on a Saturday.

Enclosed is a check for \$25.00 for the requisite filing fee. By copy of this correspondence to the Pro Se Appellant, I have served the same.

Thank you for your assistance and should you require anything further, please do not hesitate to contact our office.

With warm regards, I remain,

Very Truly Yours,

Andrew T. Shepherd

ATS/

Enclosure(s) as stated

Cc: Nancy S. Turner, Appellant
Susan Sawadske

Exhibit 9

The South Carolina Court of Appeals

Nancy Schaffer Turner, as Personal Representative of the
Estate of Martha L. Schaffer, Appellant,

v.

Susan Linda Schaffer Sawadske, Respondent.

Appellate Case No. 2013-000457

ORDER

Respondent's motion to dismiss is denied. Nothing in this order prevents the parties from addressing the issues raised in the motion to dismiss in their briefs.


FOR THE COURT

Columbia, South Carolina

cc:
Nancy S. Turner
Andrew T. Shepherd
Katherine H. Hyland

FILED
8/2/13

RECEIVED
NOV 19 2013
SC Court of Appeals