

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

ENTERED  
ASBY

Herbert Bethune )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
Waffle House, Inc., )  
 )  
Defendant. )

CASE NO.: 2013-CP-04-2409

ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION

CLERK OF COURT  
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CLERK OF COURT

After careful consideration of the entire record and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

"Magistrates have concurrent civil jurisdiction . . . in actions for damages for injury . . . to the person, if the damages claimed do not exceed seven thousand five hundred dollars." S.C. Code Ann. § 22-3-10 (2) (Supp. 2013). Where the actual value of the damages claimed exceed its jurisdictional amount, the magistrate's court is without jurisdiction to try the case. *Story v. Nicpee*, 105 S.C. 265, 89 S.E. 666 (1916) (judgment within the jurisdictional amount reversed and the proceedings dismissed, where the plaintiff's testimony fixed the value of the amount claimed in excess of the magistrate's jurisdictional amount). A court's power to hear and decide cases carries with it the inherent power to control the order of business. *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012), citing, *William's v. Bordon's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980).

The appellate court must always take notice of the lack of subject matter jurisdiction. *Amisub of S.C., Inc. v. Passmore*, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time, can

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CLERK OF COURT

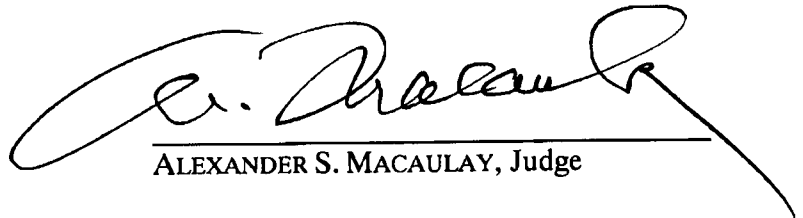
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be raised for the first time on appeal, and can be raised sua sponte by the court. See e.g., *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998) (holding issues related to subject matter jurisdiction may be raised at any time). "The acts of a court with respect to a matter as to which it has no jurisdiction are void." *State v. Guthrie*, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Ct.App.2002).

*Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 634 S.E.2d 59 (Ct.App.2006).

Accordingly, the Defendant's Motion, pursuant to Rule 59(e), SCRCP,<sup>1</sup> is DENIED.

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Anderson, South Carolina  
August 11, 2014

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**SC Court of Appeals**

<sup>1</sup> The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

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*Alexander K. Kline*  
CLERK OF COURT

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-04-2409

Hubert Bethune

Waffle House, Inc.

**A TRUE COPY**

MAY 20 2014

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Rodney M. Brown, 210 S. Main Street, Fountain Inn,  
 SC 29644

Attorney for :  Plaintiff  Defendant  
 or  
 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.  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 (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 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

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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.

[Signature]  
Circuit Court Judge

2063  
Judge Code

05/15/14  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 16th day of May 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 20th day of May 2014 to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
[Signature]  
ATTORNEY(S) FOR THE DEFENDANT(S)  
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.

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**SC Court of Appeals**

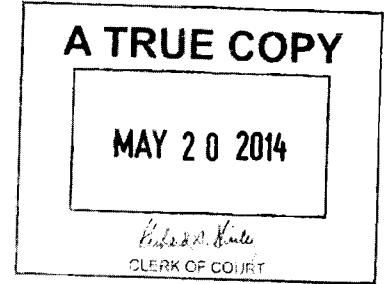
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
 )  
Hubert Bethune, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Waffle House, Inc., )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS

2013-CP-04-2409

ORDER



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PRESIDING JUDGE: The Honorable Alexander S. Macaulay  
ATTORNEY FOR PLAINTIFF: Rodney M. Brown  
ATTORNEY FOR DEFENDANT: Andrew F. Lindemann  
DATE OF HEARING: April 15, 2014  
COURT REPORTER: Diane Thommes

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This matter comes before the Court on an appeal of a Magistrate Court decision dismissing the action. The background in this case is important for the Court to understand where the Magistrate was in rendering its decision.

Based upon the information provided, the Court makes the following findings and conclusions:

1. In February 2012, the Plaintiff, Hubert Bethune, filed a Civil Complaint in Magistrate Court in Anderson County claiming he was injured from a broken plate while eating at Waffle House in Anderson County.

2. The Plaintiff subsequently sought a Motion to transfer to Common Pleas Court when he determined that his damages, in his opinion, exceed the jurisdictional limits of \$7,500.00.

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**SC Court of Appeals**

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3. The matter was scheduled for a hearing on a number of occasions and was continued due to conflicts of both the Plaintiff's and Defendant's attorney.

4. The Plaintiff/Respondent then filed a separate action in Common Pleas Court on July 16, 2013. That personal injury action, 2013-CP-04-1658, is presently pending in the Anderson County Court of Common Pleas.

5. The Magistrate Court scheduled a hearing on the Plaintiff's motion to transfer to Common Pleas Court. The Court was informed by Plaintiff's attorney that the issue was moot since a separate action had been filed in Common Pleas Court.

6. The Court, sua sponte, dismissed the action since there existed an identical action pending in Common Pleas Court, which is where the Plaintiff believed jurisdiction was proper.

7. The Defendant subsequently requested a hearing on the motion to dismiss. The parties appeared at a hearing scheduled by the Magistrate and the Defendant raised the same arguments that it did in this appeal, including legal prejudice and failure to file a motion to dismiss, asserting that the case pending in Magistrate Court was improperly dismissed.

8. Where there were two identical actions pending in different Courts, only one of which could dispose of the entire matter while the other has limited jurisdiction, the Magistrate, ex mero motu, dismissed the action pursuant to their duty and authority to control the docket in their Court.

9. The Defendant/Appellant, Waffle House, subsequently appealed this to the Anderson County Court of Common Pleas.

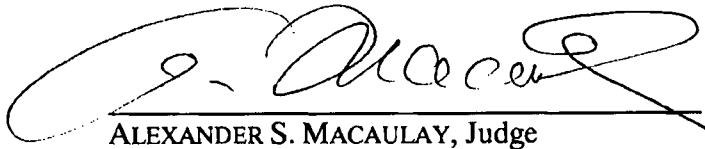
  
Page 2 of 3

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The issue presented to this Court is whether the Magistrate appropriately dismissed the case. The Court understands that there were two cases pending at the time the Magistrate dismissed the action pending in Magistrate Court. The Magistrate Court also dismissed the other arguments raised by the Defendant/Appellant as non-meritorious and determined the dismissal was appropriate.

This Court finds that Defendant has suffered no legal prejudice inasmuch as they have the right to present any and all evidence to determine liability and damages, as would have been the case in Magistrate Court or the Court of Common Pleas. This Court further finds that the Magistrate Court did take the proper action in dismissing the case pending in Magistrate Court and denies the Defendant's request to overturn the dismissal ordered by the Magistrate. *Cf. Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997).

IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

May 15, 2014  
Walhalla, South Carolina

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