

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM CHARLESTON COUNTY

Court Of Common Pleas

The Honorable Mikell R. Scarborough, Master In Equity

Case No. 2009-JG-10-685

Appellant Case No. 2014-001345

Charleston Harbor Resort and Marina

Respondent

v.

Paul A. Davis

Appellant

INITIAL BRIEF OF APPELLANT

Paul A. Davis
14639 C.R. Koon Highway
Newberry, S.C. 29109
803-321-7414
Davis979@gmail.com
Pro Se

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SEP 04 2014

SC Court of Appeals

PAUL A. DAVIS
14639 C.R. KOON HIGHWAY
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September 2, 2014

Jenny Abbott Kitchings/Clerk
The South Carolina Court Of Appeals
P.O. Box 11629
Columbia, S.C. 29211

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RE: Appeal
Charleston Harbor Resort and Marina-Plaintiff
v.
Paul A. Davis-Defendant
Case No. 2009-JG-10-685 Appellate Case No. 2014-001345

To Whom it May Concern:

I am appealing the Ruling by The Honorable Mikell R. Scarborough in the hearing held on August 19, 2013 at 100 Broad Street Charleston, S.C. in the Court of Common Pleas for the 9th Judicial Circuit, pertaining to a Judgment against myself obtained by Charleston Harbor Resort & Marina who is represented by William A. Scott, Esq. Rogers, Townsend and Thomas, PC, 775 St. Andrews Blvd. , Charleston, S.C. 29407. Service was on Joyce Lockhart, Corporate Systems, Inc. 505 Brookfield Dr. , Dover, Delaware 19901, a person in a city and state where I have never visited and have never met, nor given any authority to accept service on my behalf. Ms. Lockhart did not forward to me any documents that was served on her and I had absolutely no knowledge regarding a law suit, hearings or judgment. Once I was made aware of the existing judgment , I promptly asked John Hughes Cooper to challenge the judgment, which he did. 14639 C.R. Koon Highway Newberry, S.C. 29108 has been an active mailing address from 2000 to present. Plaintiff continues to mail statements and newsletters to this address (" Exhibit C"). Plaintiff's

Attorney, Mr. Scott, had knowledge and access to acquire this active address from his client, Charleston Harbor Resort and Marina, and did not. Instead, he sent service to an out of state location that had no authority to accept service on my behalf. I believe this service to be extremely improper, and an intentional act of deception by Mr. Scott to deprive me of my legal right of due process, and I respectfully request Judge Scarborough's ruling be reversed and Vacant Judgment as Void.

This Appeal for Relief from Judgment is based upon the Return of Private Process Server Daniel F. Delcollo ("Exhibit A"), the Affidavit of Joyce Lockhart ("Exhibit B"), statements and newsletters from Charleston Harbor Resort and Marina ("Exhibit C"), and the rules, statutes, common law, and Constitutions of South Carolina and of the United States. The Return of Private Process Server, Daniel F. Delcollo ("Exhibit A"), indicates that on February 4, 2009, at 10:45 a.m., he served "Corporate Systems, Inc. - Joyce Lockhart- Registered Agent" "by personally delivering copies to the authorized agent being served." The Return further gives a description of Ms. Lockhart as the person served. The affidavit of Joyce Lockhart ("Exhibit B") states under oath that neither she nor Corporate Systems, Inc. has never been an authorized agent for me. Although Corporate Systems, Inc. was and is the registered agent for a corporation owned by me, neither Joyce Lockhart nor Corporate Systems, Inc. was authorized to accept service for me, did not forward any documents to me, and did not notify me in any way. I do not believe this is proper Service. Rule 4 (d) (1) of the South Carolina Rules of Civil Procedure provides in pertinent part that "Service shall be made upon an individual by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process" Rule 4 (d)(1), South Carolina Rules of Civil Procedure. Plaintiff failed to serve me personally, failed

to serve someone of suitable age and discretion at my dwelling, and failed to serve anyone authorized by appointment or law. Plaintiff failed to comply with Rule 4(d)(1), failed to serve me with process, failed to obtain personal jurisdiction over me, failed to give me notice and opportunity to defend, and failed to observe my rights to due process. "A Judgment is void if a court acts without personal jurisdiction." BB&T v. Taylor, 369 S.C. 548, 551, 633, S.E.2d 501, 503 (2006); Thomas and Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E. 2d 340, 343, (1995); Stearns Bank Nat. Ass'n. V. Glenwood Falls, LP 373 S.C. 331, 644 S.E. 2d 793 (S.C. App. 2007) (reh. den., cert. den.) The instant judgment was entered by a court without personal jurisdiction over me and is therefore void. "When a defendant is not properly served, 'the court has no jurisdiction of the defendant, and all proceedings based on the pretended service are void,' Momani v. Van Surdam, 296 S.C. 409, 373 S.E. 2d 691 (S.C., App. 1988), citing Wyman V. Hoover, 10 S.C. 135, 136 (1878). Rule 60 (b) (4) of the South Carolina Rules of Civil Procedure provides in pertinent part: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceedings for the following reasons: (4) the judgment is void:" Rule 60 (b) (4), South Carolina of Civil Procedure. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from which is merely 'voidable'." Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 291, 457 S.E. 2d 340, 343 (1995) (citing, 46 AmJur2d Judgment 31 (1994.)) The instant judgment is void and should be vacated forthwith.

In summary: the only evidence in this case is the Return of Private Process Server, Daniel F. Delcollo, the Affidavit of Joyce Lockhart and statements and newsletters from Charleston Harbor Resort and Marina. I was not served, had no knowledge of any lawsuit or Judgment, wherefore, I the Defendant prays for an Order to Vacate Judgment as Void.

Thank you in advance for your gracious consideration in this matter.

Respectfully,

A handwritten signature in black ink that reads "Paul A. Davis". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

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APPEAL FROM CHARLESTON COUNTY

Court Of Common Pleas

The Honorable Mikell R. Scarborough, Master In Equity

Case No. 2009-JG-10-685

Appellate Case No.2014-00

Charleston Harbor Resort and Marina,

Respondent

v.

Paul A. Davis,

Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served The Brief Of Appeal and The Designation Of Matter on Charleston Harbor Resort and Marina by depositing a copy of it in The United States Mail, postage prepaid, on September 2, 2014, addressed to its Attorney of record, William A. Scott, Esquire, Rogers Townsend & Thomas, P.C., 775 St. Andrews Blvd., Charleston, S.C. 29407.



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