

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Circuit Court of Richland County, South Carolina

J. Michelle Childs, Circuit Court Judge

Case No. 2008-CP-40-6779

Palmetto Citizens Federal Credit Union,.....Respondent,

v.

Butch Johnson,.....Appellant,

ADMEDED RECORD ON APPEAL

Butch Johnson
Pro Se for Appellant
312 Oak Brook Drive
Columbia, South Carolina 29229
803-665-6807
Attorneys for Respondent
Suzanne Taylor Graham Grigg
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Nexsen Pruet, LLC
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Columbia, SC 29202
(803) 5402112

November 16, 2011
Columbia, South Carolina

RECEIVED
NOV 16 2011
SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

Case No.:

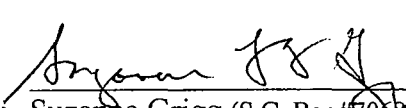
SUMMONS

(Claim and Delivery)
(Non-Jury)

RICHLAND COUNTY
FILED
2008 SEP 19 PM 1:40
BARBARA A. SCOTT
C.O.C. & G.S.

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-entitled action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint upon the Plaintiff's attorney, Suzanne Taylor Graham Grigg, at her office at 1230 Main Street, Suite 700, Columbia, South Carolina 29201, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Suzanne Grigg (S.C. Bar #70681)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
Attorneys for Plaintiff

Columbia, South Carolina

September 18, 2008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

CASE NO.: 2008-CP-_____-_____

Palmetto Citizens Federal Credit Union,
Plaintiff,

vs.

Butch Johnson,
Defendant.

COMPLAINT

(Claim and Delivery)
(Non-Jury)

RICHLAND COUNTY
FILED
2008 SEP 19 PM 1:40
BARBARA A. SCOTT
C.C.C. & G.S.

Plaintiff Palmetto Citizens Federal Credit Union ("PCFCU"), by and through its undersigned attorney, hereby alleges and states its complaint against Defendant Butch Johnson ("Defendant Johnson"), as follows:

THE PARTIES

1. PCFCU is a federally chartered federal credit union, and it is authorized to conduct business in the State of South Carolina.
2. Upon information and belief, Defendant Johnson is a citizen and resident of Richland County, South Carolina.
3. PCFCU is further informed and believes that the personal property described herein, which is the subject of this action, is located in Richland County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Claim and Delivery)

4. On or about June 14, 2004, Defendant Johnson executed that certain Open-End Disbursement Receipt Plus (the "Note") in favor of PCFCU for a loan in the original principal

amount of \$59,414.00. The Note was secured by a purchase money security interest in a 2002 BMW 745LI automobile, VIN WBAGN63442DR03665 (the "Automobile"). A copy of the Note is attached hereto as "Exhibit A" and incorporated herein by reference.

5. In order to better secure payment of the amounts due under the Note, Defendant Johnson granted PCFCU a security interest in the Automobile. PCFCU's lien is recorded on the face of the Certificate of Title (the "Title") for the Automobile. A copy of the Title is attached hereto as "Exhibit B" and is incorporated herein by reference.

6. Upon information and belief, PCFCU holds a first lien on the Automobile, as denoted on the Title.

7. PCFCU asserts that Defendant Johnson is in default under the terms of the Note by his failure to make the monthly installment payments to PCFCU due under the Note. Specifically, Defendant Johnson is in the arrears on the loan payments in the amount \$4,888.30 and the payments on the loan are now due for April 25, 2008.

8. The obligations of Defendant Johnson under the terms and conditions of the Note are in default and PCFCU has accelerated payment of the debt due under the Note.

9. PCFCU has sent written notice of the default to Defendant Johnson in accordance with and conforming to state law. Defendant Johnson has failed to remit the amounts due and owing to PCFCU in compliance with the terms of the Note.

10. There is now due and owing to PCFCU under the Note, as of August 7, 2008, the principal amount of Twenty-Six Thousand Two Hundred Fifty-Four and 22/100 Dollars (\$26,254.22), plus accrued interest of Four Hundred Twelve and 24/100 Dollars (412.24) and

late fees of Seventy-Five and 00/100 Dollars (\$75.00) as of August 7, 2008, and other charges, including but not limited to reasonable attorneys' fees and other legal costs.

11. PCFCU is informed and believes that it is entitled to judgment against Defendant Johnson for the full amount of the indebtedness owed to it by Defendant Johnson, including reasonable attorneys' fees and the costs of this action.

12. PCFCU is informed and believes that Defendant Johnson is now in control or possession of the Automobile.

13. PCFCU is informed and believes that it is lawfully entitled to immediate possession of the Automobile by virtue of its perfected security interest in the Automobile.

14. PCFCU is informed and believes that it is entitled to have the Automobile repossessed by the Sheriff of Richland County, South Carolina, and placed in the hands of PCFCU, or one of its agents or assigns, to be disposed of in a commercially reasonable manner.

WHEREFORE, PCFCU prays that the Court:

(a) grant PCFCU judgment against Defendant Johnson in the amount of \$26,741.46, plus interest and other charges accruing after August 7, 2008, and reasonable attorneys' fees and other legal costs;

(b) order that PCFCU is entitled to immediate possession of the Automobile pursuant to S.C. Code Ann. §15-69-10 et. seq., as against Defendant Johnson and/or any other party in possession of the Automobile;

(c) order that the Sheriff of Richland County take possession of the Automobile and place PCFCU in possession of the Automobile;

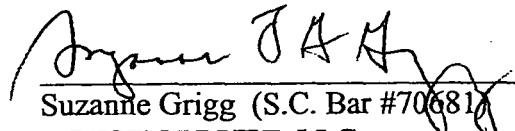
(d) order that PCFCU has the right to dispose of the Automobile, and that PCFCU is allowed to apply the proceeds from such sale to the indebtedness owed by Defendant Johnson to PCFCU, as provided by law;

(e) restrain and enjoin Defendant Johnson, his agents, servants, employees, or assigns from damaging, destroying, disposing of, or using so as to substantially impair the value of the Automobile during the pendency of this action or until further order of the Court;

(f) in the event the proceeds from the sale of the Automobile are insufficient to satisfy the indebtedness due under the Note, that the Court enter a deficiency judgment against Defendant Johnson for the difference remaining due to PCFCU; and,

(g) grant such other and further relief as the Court deems just and proper.

Respectfully submitted this the 18 day of September 2008, at Columbia, South Carolina.


Suzanne Grigg (S.C. Bar #70681)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Phone: (803) 771-8900
Facsimile: (803) 253-8277

Attorneys for Plaintiff Palmetto Citizens Federal Credit Union

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

CASE NO.: 2008-CP-_____-

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

VERIFICATION

(Claim and Delivery)
(Non-Jury)

RICHLAND COUNTY
FILED
2008 SEP 19 PM 1:40
BARBARA A. SCOTT
Clerk & G.S.

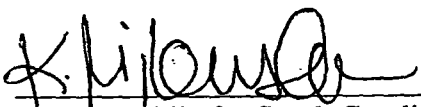
PERSONALLY APPEARED before me, Gabriel McFadden, who, being duly sworn, deposes and says that he is the Collection Manager for Palmetto Citizens Federal Credit Union, the Plaintiff in the foregoing action; that he has read the within Complaint; that based upon his own personal knowledge, the allegations contained in the Complaint are true and correct, except as to those things alleged upon information and belief, and as to those, he believes them to be true and correct.

PALMETTO CITIZENS FEDERAL
CREDIT UNION



Gabriel McFadden
Collections Manager

SWORN and subscribed to before me
this 9th day of September 2008.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 9/27/17

LOANLINER**PALMETTO
CITIZENS**
FEDERAL CREDIT UNIONP.O. Box 5846
Columbia, SC 29250**Open-End Disbursement
Receipt Plus****BORROWER INFORMATION**

BORROWER 1 NAME

BORROWER 2 NAME

JOHNSON, BUTCH

111 QUAIL RUN

CONWAY SC 29528

ACCOUNT NUMBER
77579-L19.1DATE
06-14-2004**SECURITY OFFERED**

THE ADVANCE IS SECURED BY YOUR SHARES, ALL PROPERTY SECURING OTHER PLAN ADVANCES AND LOANS RECEIVED IN THE PAST OR IN THE FUTURE, AND THE FOLLOWING PROPERTY:

PROPERTY/MODEL	YEAR	I.D. NUMBER	VALUE	KEY NUMBER
BMW 745LI 2002 WBAGN83442DRO3685				

PLEDGE OF SHARES
AND/OR DEPOSITS

SAVINGS

ACCOUNT
NUMBER

*77579S1

PLEDGE OF SHARES
AND/OR DEPOSITS

SAVINGS

ACCOUNT
NUMBER

*77579S1

☐ **CONSUMER'S CLAIMS AND DEFENSES NOTICE** -- The following paragraph applies to the Advance only if the box is checked.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

SUBSEQUENT ELECTION FOR VOLUNTARY PAYMENT PROTECTION

You can now voluntarily elect to become insured with the coverage(s) shown below. In order for coverage to become effective you must meet all eligibility requirements stated in the Credit Insurance Application/Schedule. A statement of insurability must be completed if you are adding coverage more than 30 days after the date of your advance. Details of this insurance coverage are included in the Insurance Certificate which you received with your Credit Agreement. Ask us if you need a copy of the Insurance Certificate. You agree to the terms of the insurance election checked below and you authorize us to add the charges for the insurance to your outstanding balance each month. Your payment amount will increase or you will be required to make additional payments. Coverage election applies to the entire balance on this subaccount. Insurance rates are subject to change.

YOU ELECT THE FOLLOWING:

YES NO

MONTHLY LOAN BALANCE

NAME OF INSURER(S)

Single Credit Disability

☐

Joint Credit Disability

☒

Single Credit Life

☒

Joint Credit Life

☒

483838

REPAYMENT TERMS

DAILY PERIODIC RATE	ANNUAL PERCENTAGE RATE	INTEREST RATE IS:	OTHER FEES (Amount and Description)	NEW BALANCE THIS SUBACCOUNT
.0155(19%)	5.690%			\$59,414.00
AMOUNT ADVANCED	PAYMENT AMOUNT	DATE DUE	PAYMENT FREQUENCY	LINE OF CREDIT LIMIT
\$59,414.00	\$977.68	7/25/2004	Monthly	\$59,414.00
				REMAINING LIMIT
				\$0.00

SIGNATURES

By signing below, or by endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree:

- (1) that the property described in the Security Offered section above ("Property") is security under the terms of the LOANLINER Credit and Security Agreement (the "Plan") for all amounts you owe under the Plan and that the property description is incorporated into and a part of the Plan;
- (2) that the Property is also security for any other loans, including but not limited to, any credit card loan that you have with the credit union now or in the future;
- (3) that you will make the payments disclosed above in accordance with the terms of the Plan; and
- (4) that if you are now electing credit insurance, you are voluntarily electing the coverage checked in the Subsequent Election for Voluntary Payment Protection section above.

X *on CF Agreement*

(SEAL) 8/14/2004

BORROWER 1 SIGNATURE

DATE

X

(SEAL) 8/14

BORROWER 2 SIGNATURE

FOR CREDIT UNION USE ONLY

REQUESTED:

MEMBER PAYS
PREMIUM FOR:

CHECK NUMBER:

PLAN/SUBACCOUNT NO.:

BRANCH NUMBER:

PROCESSED BY:

DATE

LOAN OFFICER COMMENTS:

LOAN OFFICER INITIALS

EXHIBIT

A

lablles

77579 - 419.1 ✓

STATE OF SOUTH CAROLINA CERTIFICATE OF TITLE OF A VEHICLE

DATE OF REGISTRATION 08/07/2008	YEAR 2002	MAKE BMW	MODEL 745i	NEW/USED USED
REGISTRATION FEE \$12.00	ODOMETER 42404	WEIGHT 4464	TITLE NUMBER 37073013438011	

REGISTRATION FEE
\$12.00

OWNER'S NAME OF OWNER(S)
JOHN D. HUNTER
101 HUNTER RD
COLUMBIA SC 29206

CUSTOMER NUMBER: 24023040

FINANCIAL HOLDER
PALMETTO CITIZENS FEDERAL CREDIT UNION
PO BOX 15846
COLUMBIA SC 29215-846
DATE OF LIEN 07/14/2004

1ST LIEN RELEASED
DATE
BY
(AUTHORIZED AGENT)

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

EMILIA SPADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

36168489

EXHIBIT

B

9

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,
Plaintiff,

vs.

Butch Johnson,
Defendant.

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

Case No. 2008-CP-40-69

ORDER OF PUBLICATION

JEANNETTE M. McBRIDE
C.C.P. & C.S.

2009 JAN -9 PM 4:18

FILED

RICHLAND COUNTY

Upon reading and the filing of the Affidavit and Petition of Suzanne Taylor Graham Grigg, Esquire, of the firm of Nexsen Pruet, LLC, attorneys for the Plaintiff, and it appearing that Defendant Butch Johnson ("Defendant Johnson") is a necessary and proper party to this action, the subject of which is the claim and delivery of an automobile; that the Plaintiff is unable with due diligence to make service of the Summons and Complaint in said action upon said Defendant; that Defendant Johnson cannot be found within this state; that the last known address for Defendant Johnson is: 312 Oak Brook Drive, Columbia, South Carolina; and that the Plaintiff has made reasonable efforts to personally serve Defendant Johnson.

IT IS, THEREFORE, ORDERED:

That the service of the Summons and Notice of Filing of Complaint in this action be made on Defendant Johnson, by publication of the same in a newspaper of general circulation in Richland County, South Carolina once a week for three (3) successive weeks, and that on or before the date of the first publication of said Summons and Notice of Filing of Complaint, Plaintiff shall deposit in the mail a copy of the said Summons, together with a copy of the

Complaint to be carried by certified mail, postage prepaid, addressed to Butch Johnson at his last known address as stated hereinabove.

1/9, 2009

Janette Whitbridge
Presiding Judge
Clerk of Court

11.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

Civil Action No. 2008-CP-40,6779

NOTICE OF MOTION AND MOTION
FOR DEFAULT JUDGMENT

DEANETTE M. McBRIDE
Clerk of Court
2010 MAR -2 PM 4:19
FILED
RICHLAND COUNTY

TO: DEFENDANT BUTCH JOHNSON:

YOU WILL PLEASE TAKE NOTICE that Palmetto Citizens Federal Credit Union, the Plaintiff in the above-captioned action, hereby moves the Court, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, for a default judgment against Defendant Butch Johnson (the "Defendant") for the relief prayed for in the Complaint filed with the Court on September 19, 2008.

The grounds for this Motion are as follows:

1. As stated in the Affidavit of Default and Non-Military Service for Butch Johnson Following Service by Publication (the "Affidavit of Default") filed with the Court, the Defendant has failed to respond to the Complaint filed with the Court on September 19, 2008, within thirty (30) days of service of the same.

2. The Defendant is now in default.

3. The Defendant has failed to pay to the Plaintiff the amounts due under the Open-End Disbursement Receipt Plus contract (the "Note"), a copy of which is attached hereto as Exhibit "A", and incorporated herein by reference.

4. The Defendant has failed to surrender the 2002 BMW 745LI automobile, VIN #WBAGN63442DR03665 (the "BMW"), securing the claim of the Plaintiff under the Note.

5. The Defendant owes to the Plaintiff the sum of Twenty-Nine Thousand Fifteen and 82/100 Dollars (\$29,015.82) in principal and accrued interest as of February 16, 2010, representing amounts due under the Note, exclusive of interest accrued after such date and attorneys' fees and expenses. A sworn Statement of Account attesting to the amount of the outstanding indebtedness is attached hereto as Exhibit "B" and incorporated herein by reference.

6. The Note provides that, in the event of default, the Plaintiff is entitled to enforce its security interest in and lien on the BMW pledged therein to secure the indebtedness owed to the Plaintiff under the Note.

7. The Note provides that, in the event of default in payment, the Defendant will pay the Plaintiff its attorneys' fees and expenses incurred in the enforcement of the Note.

8. As evidenced by the Affidavit of Attorneys' Fees and Costs attached hereto and incorporated herein by reference as Exhibit "C", the Plaintiff is entitled to an award of attorneys' fees and costs in this matter in the amount of Three Thousand Four Hundred Sixty-Six and 02/100 Dollars (\$3,466.02).

9. The Note further provides that the Plaintiff is entitled to interest on the indebtedness at the contract rate of 5.95% per annum until the indebtedness is paid in full.

10. On February 27, 2009, the Defendant filed for protection under chapter 13 of the United States Bankruptcy Code. Upon the bankruptcy filing, this action was stayed, pursuant to 11 U.S.C. Section 362 of the Bankruptcy Code. However, the Defendant's bankruptcy case has been dismissed by Order of the Bankruptcy Code filed April 16, 2009, and this action may now proceed. A copy of the Order Dismissing Case With Prejudice is attached hereto as Exhibit "D" and incorporated herein by reference.

11. Based upon the foregoing, the Plaintiff hereby moves the Court:

(a) For entry of a default judgment against the Defendant in the amount of Twenty-Nine Thousand Fifteen and 82/100 Dollars (\$29,015.82), plus accrued interest from February 16, 2010 until entry of judgment, and thereafter, at the contract rate of interest of 5.95% per annum, until the judgment is paid in full;

(b) For entry of an Order awarding attorney's fees and expenses to the Plaintiff in the amount of Three Thousand Four Hundred Sixty-Six and 02/100 Dollars (\$3,466.02);

(c) For entry of an Order authorizing the Plaintiff to take possession of the BMW subject to its security interest and to dispose of the BMW, with the proceeds to be applied toward payment of the judgment indebtedness owed by the Defendant to the Plaintiff;

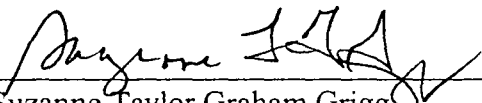
(d) For entry of an Order authorizing the Sheriff of Richland County, South Carolina to recover the BMW subject to the Plaintiff's lien and to place the Plaintiff or its agent in possession of the BMW;

(e) In the event the Court determines that a default damages hearing is required, the Plaintiff moves the Court to convene such a hearing for the assessment of damages; and

(f) For such other and further relief as the Court may deem just and proper in this case.

This motion is based upon the pleadings herein, the applicable law and such other materials as may be served upon the parties.

14



Suzanne Taylor Graham Grigg

NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Phone: 803-771-8900
Fax: 803-253-8277

February 26, 2010

Columbia, South Carolina

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

IN THE CIRCUIT COURT

Case No. 2008-CP-40-6779

AFFIDAVIT OF DEFAULT AND NON
MILITARY SERVICE FOR BUTCH
JOHNSON FOLLOWING SERVICE BY
PUBLICATION

RICHLAND COUNTY
FILED
2009 FEB 26 AM 10:54
JEANETTE M. BRIDE
C.C. 803

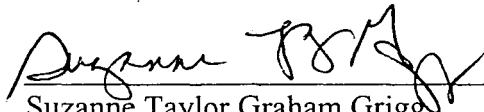
PERSONALLY APPEARED before me, Suzanne Taylor Graham Grigg, who being duly sworn, deposes and says:

1. She is an attorney with the law firm of Nexsen Pruet, LLC ("Nexsen Pruet"), counsel for the Plaintiff in the above action;
2. The *Summons and Notice of Filing of Complaint* were duly served by publication upon the Defendant Butch Johnson, as evidenced by the Affidavit of Publication filed with the Court on February 11, 2009, and incorporated herein by reference;
3. Pursuant to the Court's Order filed January 9, 2009, the Summons and Notice of Filing of Complaint were printed in *The Columbia Star*, a newspaper published in and of general circulation in Richland County, South Carolina, for three (3) consecutive weeks, beginning on January 23, 2009, and thereafter, on January 30, 2009 and February 6, 2009, and a copy of the Summons and Complaint was sent via certified mail, postage prepaid to Defendant Butch Johnson at his last know address;

4. Upon information and belief, said Defendant is not, and was not at the time of the commencement of this action, a member of the Armed Services of the United States, as is contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended;

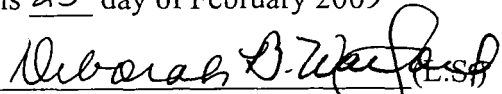
5. More than thirty (30) days have elapsed since the first publication of the foregoing pleadings, and no responsive pleading or motion contemplated under Rule 12, SCRCP, has been served upon Plaintiff's attorney by said Defendant in this matter; and,

6. Said Defendant is now in default.


Suzanne Taylor Graham Grigg
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

Attorney for Plaintiff

SWORN and subscribed to before me
this 25 day of February 2009


Notary Public for South Carolina
My Commission Expires: 10-22-11

State of South Carolina

Court of Common Pleas

County of Richland

2008-CP-40-6779

Palmetto Citizens Federal
Credit Union

:
:
:
:
:

-VS-

TRANSCRIPT OF RECORD

Butch Johnson

July 26, 2010
Columbia, South Carolina

B E F O R E:

The Honorable J. Michelle Childs, Judge.

A P P E A R A N C E S:

Jennifer Hollingsworth, Esquire
Attorney for the Plaintiff

Butch Johnson, pro se defendant

Daphne D. Helms
Circuit Court Reporter

RECEIVED
MAR 23 2011
SC Court of Appeals

18

1 **The Court:** Okay. My first case is Palmetto Citizens.

2 Do you expect anybody on the other side?

3 **Ms. Hollingsworth:** Yes, Your Honor.

4 **The Court:** Okay.

5 **Mr. Johnson:** Yes, Your Honor. I'm Butch Johnson.

6 **The Court:** Okay. And you are Mr. Butch Johnson.

7 **Mr. Johnson:** Yes.

8 **The Court:** Okay.

9 **Ms. Hollingsworth:** Your Honor, Jennifer Hollingsworth
10 for Ms. Grigg this morning.

11 **The Court:** Okay. This is civil action number 2008-CP-
12 40-06779, the matter of Palmetto Citizens Federal Credit
13 Union, plaintiff, versus Butch Johnson. Mr. Johnson is
14 appearing pro se. Is that correct? You're representing
15 yourself?

16 **Mr. Johnson:** Yes, Your Honor.

17 **The Court:** Okay. And then with respect to Palmetto
18 Citizens, Jennifer Hollingsworth?

19 **Ms. Hollingsworth:** Hollingsworth, yes, Your Honor.

20 **The Court:** Okay. The Court has this styled as a motion
21 for default judgment. So we'll hear from you, Ms.
22 Hollingsworth.

23 **Ms. Hollingsworth:** Thank you, Your Honor. We're here
24 this morning. This is a claim-and-delivery action that was
25 begun back in September of 2008 related to a B.M.W. vehicle.

1 Mr. Johnson had taken out a loan with my client, Palmetto,
2 and there was a lien placed on that vehicle, purchase money
3 security interest on that B.M.W. vehicle. Back as of
4 April 24th, 2008, Mr. Johnson had gotten behind and owed
5 \$4,888.30, so---

6 **The Court:** Say that number again.

7 **Ms. Hollingsworth:** \$4,888.30.

8 **The Court:** Okay.

9 **Ms. Hollingsworth:** So that was the payments as of
10 April 24th, 2008, that were due when this action was filed in
11 September of 2008. We were unable to serve Mr. Johnson after
12 approximately three to four weeks by two different process
13 servers, so we obtained an order for publication and we
14 served Mr. Johnson by publication in "The Columbia Star" for
15 three weeks.

16 We subsequently on February of 2009 filed an affidavit
17 for default. Mr. Johnson then provided us with notice of a
18 bankruptcy filing on February 27, 2009. So this matter was
19 stayed briefly while that bankruptcy was going forward.
20 However, that bankruptcy was dismissed as of April 16th,
21 2009. So I believe pursuant to a 180-day rule no claim was
22 filed, so the bankruptcy court dismissed Mr. Johnson's
23 bankruptcy. And subsequently in March -- March 2, 2010, of
24 this year we filed the subject motion for default to which
25 Mr. Johnson did file a reply, and so we're here this morning

1 on that motion.

2 No payments have been made. We've made numerous
3 attempts to try to obtain the vehicle through repossession,
4 but the vehicle has been hidden from us. And so we're here
5 just seeking the judgment in the matter this morning.

6 The Court: Okay. All right. Mr. Johnson, do you
7 dispute any of the facts that she's indicated?

8 Mr. Johnson: Yes, I do, Your Honor.

9 The Court: Okay.

10 Mr. Johnson: If it please the Court, that number one---

11 The Court: Well, let's start out: Did you purchase a
12 B.M.W. from her client?

13 Mr. Johnson: Yeah, there was a vehicle, but I'd like to
14 approach the bench and be willing to show you what actually
15 transpired with it.

16 The Court: Okay. You need to show her first.

17 Mr. Johnson: Okay.

18 (Mr. Johnson shows a document to Ms. Hollingsworth.)

19 Mr. Johnson: That was an open-ended agreement I didn't
20 sign. Well, I had such a good rapport with First---

21 The Court: You need to go back to your table.

22 Mr. Johnson: I'm sorry.

23 The Court: That's okay.

24 Mr. Johnson: I had such a good rapport with First
25 Palmetto that I paid off not only a mortgage loan but other

1 vehicles, and over the telephone we worked out this
2 particular transaction. But what I'm here today for namely
3 is, to get directly to the point, they utilized a service of
4 process by publication, and based on my due diligence and the
5 little research I've done on the South Carolina Code of Laws
6 15-9-710 it stated that you had 30 days to reply or answer a
7 default notice if it was published in a newspaper from that
8 last date of publication which the last date of publication
9 -- of course, I can show you that as well which was---

10 **The Court:** Okay. We're talking about two different
11 things. One is procedurally -- I mean, the facts that she's
12 mentioning are that in September 2008 that you purchased or
13 got a loan from Palmetto Citizens Federal Credit Union to
14 purchase a B.M.W. Are you disputing that?

15 **Mr. Johnson:** No. I did purchase the vehicle.

16 **The Court:** Okay. And then she's saying that as of
17 April 24, 2008, that you would have owed \$4,888.30.

18 **Mr. Johnson:** I'm not exactly sure that that's the exact
19 amount because we had what we call a cross collateral, and
20 they would have refused payments because I had a Visa account
21 and I had a mortgage account and I had an automobile account
22 -- automobiles accounts which I paid off several of the
23 automobile loans due to the fact that I had to go out and
24 apply to get another loan from another bank to pay it off
25 because they wouldn't accept the payments because they---

1 **The Court:** Do you have any evidence that you actually
2 sent payments and they were refused?

3 **Mr. Johnson:** Well, I'll put it this way here: No, I
4 don't because I would always take it in person. I was not
5 mailed a receipt, and Mr. Gabriel McFadden got very
6 belligerent with me---

7 **The Court:** Who would not accept payments on a car
8 that---

9 **Mr. Johnson:** Because---

10 **The Court:** ---on a loan?

11 **Mr. Johnson:** Because the federal credit union -- they
12 informed me that it was cross collateral transaction, and
13 they didn't have to accept a payment on a car when my Visa
14 payment was due and my mortgage payment was due.

15 **The Court:** So did they accept the payment to pay for
16 those other cars?

17 **Mr. Johnson:** They wouldn't -- oh, yeah, they accepted a
18 payoff.

19 **The Court:** Right.

20 **Mr. Johnson:** It was a payoff that I tendered to them to
21 pay it off, and based on my---

22 **The Court:** So you're basically saying you had three
23 accounts with them: A car, a MasterCard, and a Visa?

24 **Mr. Johnson:** I had one, two, three -- I had four
25 automobile loans with them---

1 **The Court:** Okay.

2 **Mr. Johnson:** ---a Visa, and a mortgage loan.

3 **The Court:** Okay. So when you brought in money---

4 **Mr. Johnson:** To pay it off---

5 **The Court:** ---they chose which account to apply it to.

6 **Mr. Johnson:** That's exactly right, but what happened
7 is---

8 **The Court:** Okay. Even if they did that, that still
9 made you owe on this B.M.W.

10 **Mr. Johnson:** That's correct. Nonetheless, after I paid
11 off the other three vehicles, they held my titles until such
12 time that I informed them that I was going to the court to
13 get the titles released to the bank which at the time they
14 decided: Look, give us another two or three weeks. Gabriel
15 McFadden informed me that he had to check with his boss and
16 they had to go to Atlanta to deal with whatever they had to
17 deal with. But to make a long story short, they finally
18 accepted the fact that I was due the titles regardless of the
19 cross collateral and they could have transferred that
20 money---

21 **The Court:** Okay. But you agree that you owe money on
22 the B.M.W.

23 **Mr. Johnson:** I do owe money on the B.M.W.

24 **The Court:** Okay. And that this was an action filed to
25 collect on that money.

1 **Mr. Johnson:** I agree with that.

2 **The Court:** Okay. And so she's here trying to get a
3 default judgment saying that you are behind on your payments.
4 Do you dispute that?

5 **Mr. Johnson:** Well, she's here namely -- if you'll look
6 at the pleadings, Your Honor, that I filed a Chapter 13---

7 **The Court:** Right.

8 **Mr. Johnson:** ---less than 30 days from the last
9 publication of "The Star" newspaper. However---

10 **The Court:** Which has since been dismissed. Is that
11 correct?

12 **Mr. Johnson:** Yes, it has been -- it has been dismissed,
13 but based on my findings of the law and also the bankruptcy
14 case that I've presented in my reply---

15 **The Court:** Okay. Let's go back here. She filed a
16 complaint in September 2008 in this courtroom. Have you
17 eventually received a copy of the complaint?

18 **Mr. Johnson:** I received a copy of the complaint---

19 **The Court:** Okay.

20 **Mr. Johnson:** ---at the time.

21 **The Court:** Way back then or at some particular time.

22 **Mr. Johnson:** No. No.

23 **The Court:** When did you receive a copy of the
24 complaint?

25 **Mr. Johnson:** Whenever they went -- we went to the

1 bankruptcy.

2 **The Court:** Okay. So you got a copy of the complaint.

3 **Mr. Johnson:** Yes.

4 **The Court:** Okay. And then once you got a copy of the
5 complaint, did you ever respond to it?

6 **Mr. Johnson:** No. I was in bankruptcy, but the
7 statute---

8 **The Court:** So the answer is no, you didn't respond.

9 **Mr. Johnson:** I didn't respond to it because I was in
10 bankruptcy and I wasn't sure what was going to happen in the
11 bankruptcy case. So what happened is---

12 **The Court:** Okay. That's fine, but then the bankruptcy
13 got dismissed. Correct?

14 **Mr. Johnson:** And then they were supposed to go back and
15 serve me officially again because it's unconstitutional---

16 **The Court:** Based on what? Why were they to serve you
17 again?

18 **Mr. Johnson:** Because, number one, I filed Chapter 13.
19 It was less than 30 days when the last publication was out.

20 **The Court:** Okay. But at some point your bankruptcy was
21 dismissed. That means the bankruptcy court is not holding
22 your bankruptcy. They're not doing anything, so these
23 proceedings don't get stayed any further.

24 **Mr. Johnson:** Well, at least they would have -- they
25 would have served me with the proper notice that they was

1 going to do what they were going to do in regards to -- and
2 they called me constantly after that. I've talked with
3 Gabriel many a times. I've been to their---

4 **The Court:** Okay. So are you suggesting that all she
5 needs to do is serve you and then you'll do what?

6 **Mr. Johnson:** If she served---

7 **The Court:** Because you've already admitted---

8 **Mr. Johnson:** Well, we were negotiating, Attorney Grigg?

9 **Ms. Hollingsworth:** Grigg.

10 **Mr. Johnson:** Grigg. Attorney Grigg. We were
11 negotiating as to how can we work out the payoff on the
12 account.

13 **The Court:** And I'm not disputing that. Right. And you
14 have every -- any time anybody serves you with a lawsuit, you
15 have the ability to try to negotiate whatever.

16 **Mr. Johnson:** Right.

17 **The Court:** Okay. But at some point the negotiations
18 are over and that's not -- that's now where they are
19 proceeding to get the judgment because apparently you all
20 weren't able to resolve it.

21 **Mr. Johnson:** Or maybe I'm not clear on where we are in
22 the fact that when I filed Chapter 13 the only reason I
23 didn't answer -- I replied to everything else.

24 **The Court:** Okay. That's okay. That's okay. She -- I
25 don't believe Ms. Hollingsworth - and you can correct me if

1 I'm wrong - I don't think you're disputing that once he filed
2 bankruptcy that that was going to stay these proceedings.

3 **Ms. Hollingsworth:** It was stayed, Your Honor.

4 **The Court:** Okay. So she's saying that that stayed it
5 which meant that no action---

6 **Ms. Hollingsworth:** No collections.

7 **The Court:** ---no collections -- they weren't doing
8 anything because they had to wait to see what bankruptcy
9 court would do even as applied to them as a creditor. But
10 now, once they dismissed it, bankruptcy court is no longer
11 dealing with your action. So you're back to square one which
12 is them having served your complaint, you having a duty to
13 respond to it or be held in default.

14 **Mr. Johnson:** But I never got the complaint. That's the
15 point I'm making.

16 **The Court:** Well, you told me you had gotten it as a
17 part of the bankruptcy proceedings.

18 **Mr. Johnson:** At the bankruptcy proceedings -- this is
19 what they served on the court in the bankruptcy proceedings.
20 It was -- let me pull that. Bear with me just one moment,
21 Your Honor.

22 **Ms. Hollingsworth:** That's the copy of it right there.

23 **Mr. Johnson:** Huh?

24 **Ms. Hollingsworth:** You have the lawsuit right there.
25 If you go forward---

1 **Mr. Johnson:** I got this out of the clerk's office.

2 **Ms. Hollingsworth:** That's the -- that's the summons and
3 complaint verification.

4 **Mr. Johnson:** I'm talking about the one that was filed
5 with the bankruptcy court. Okay. Here it is right here.
6 This is what they filed in the bankruptcy court. This is the
7 bankruptcy filing and they were---

8 **Ms. Hollingsworth:** That was filed here in Richland
9 County.

10 **Mr. Johnson:** Yeah, I understand, but a copy of this was
11 sent in to the bankruptcy court, this right here.

12 **Ms. Hollingsworth:** That's up to the -- it's up to the
13 court.

14 **The Court:** And what you're handing me---

15 **Mr. Johnson:** And then---

16 **The Court:** Hold on. You're handing me a notice of the
17 bankruptcy filing.

18 **Mr. Johnson:** That's correct and---

19 **The Court:** So basically the Palmetto Citizens filed in
20 circuit court, which is where we are, Richland County, just a
21 notice that you had filed a bankruptcy so that that way this
22 action would be stayed and so the court wouldn't put it on a
23 docket. They wouldn't require you all to appear or do
24 anything, and that's exactly what she agreed to: That once
25 bankruptcy was filed, she stayed this matter. Now that

1 bankruptcy is dismissed, this matter comes back to our docket
2 for us to resolve. So we're not disputing any of that.

3 Mr. Johnson: Well---

4 The Court: The issue is whether or not you indicated
5 that you did get a copy of the complaint. So now you have to
6 act on the complaint.

7 Mr. Johnson: Well, even if I had acted on the
8 complaint, at the time I got this right here, they had
9 already filed in court a motion for a default premature.

10 The Court: But the motion for default was March 2nd,
11 2010, but your bankruptcy was dismissed April 16, 2009.

12 Mr. Johnson: At that point in time it's my
13 understanding that she's to serve me all over again.

14 The Court: Based on what? Based on what?

15 Mr. Johnson: I mean, I filed bankruptcy. I stayed the
16 action.

17 The Court: I know, but when it was dismissed, that's
18 over. So she gets to now proceed on her action because
19 bankruptcy is not holding your case any more.

20 Mr. Johnson: Well, that's -- that's my ignorance of the
21 law and---

22 The Court: So you're not disputing you got a copy of
23 the complaint. Is that correct?

24 Mr. Johnson: I got a copy of the complaint from the
25 clerk of court, yes.

1 **The Court:** What clerk of court?

2 **Mr. Johnson:** Up here.

3 **The Court:** In Richland County?

4 **Mr. Johnson:** In Richland County, yes.

5 **The Court:** So you got -- how did you get a copy from
6 the clerk?

7 **Mr. Johnson:** I went to the file.

8 **The Court:** Okay.

9 **Mr. Johnson:** Based on -- based on---

10 **The Court:** Okay. But let's -- let's---

11 **Mr. Johnson:** Based on this.

12 **The Court:** Okay. Ms. Hollingsworth, let you go through
13 so that it's clear for the record and these proceedings what
14 you believe is his proper service so that -- he's challenging
15 in his own lay terms whether or not he was properly served.

16 **Ms. Hollingsworth:** Correct, Your Honor.

17 **The Court:** So make that clear for the Court.

18 **Ms. Hollingsworth:** I understand, Your Honor. We
19 attempted multiple personal service attempts. Attached to
20 our affidavit of default are affidavits of two different
21 process servers where we attempted multiple times to serve
22 Mr. Johnson personally from November 14th, 2008, through
23 November 19th, 2008, by Jillian's process server and again
24 from November 26th through December 6, 2008, by Reasonable
25 Investigation, Incorporated.

1 After those multiple failed attempts which included
2 avoidance of service as shown by Claude Jillian's affidavit
3 where there were personal contacts made with Mr. Johnson and
4 he avoided service, we moved for an order of publication
5 which we received. Mr. Johnson was served by publication in
6 "The Columbia Star" for three weeks on January 23rd, 2009,
7 January 30th, 2009, and February 6th, 2009. So---

8 Mr. Johnson: Well---

9 Ms. Hollingsworth: ---he was served by publication---

10 The Court: You'll get a chance to -- let her finish.

11 Ms. Hollingsworth: ---following those three weeks.

12 When we moved for -- when we moved for the affidavit of
13 default on February 26th, 2009, Mr. Johnson immediately filed
14 bankruptcy proceedings. What I'd say for the clarification
15 of the Court: At the same time that this claim-and-delivery
16 action has been going on, there's been a foreclosure action
17 going on. As Mr. Johnson stated to the Court, he has
18 multiple different loan accounts with the credit union. One
19 included a home, and that foreclosure action went on in this
20 court for this entire time period.

21 Mr. Johnson was -- we attempted service of both of those
22 complaints against Mr. Johnson on those dates that I gave
23 you, and on March 6th, 2009, Mr. Johnson did answer and
24 counterclaim the foreclosure proceeding. He just did not
25 answer the claim-and-delivery action. The house has since

1 been foreclosed on. I believe it was damaged by fire. That
2 action is done. The claim-and-delivery action has not been
3 resolved. We haven't been able to obtain the B.M.W. So
4 that's why more than a year after the bankruptcy is dismissed
5 and nothing has happened in the case in terms of resolving it
6 we've moved for default.

7 **The Court:** Okay. But obviously through Mr. Johnson's
8 own statements he's been in touch with Suzanne Griggs.

9 **Ms. Hollingsworth:** He has, Your Honor.

10 **The Court:** Is that correct?

11 **Mr. Johnson:** Yes. Also, Your Honor---

12 **The Court:** So you have notice that you---

13 **Ms. Hollingsworth:** Actual notice.

14 **The Court:** ---there's a complaint.

15 **Mr. Johnson:** Yes, Your Honor. Also, I disagree with
16 her, and Jillian -- I've never had contact with this process
17 server. As a matter of fact, if you'll notice on here he
18 says that he filed an investigation that was 312 Mylick
19 (phonetic) Road, Columbia, South Carolina. There's no such
20 address as that, so obviously he was going to the wrong
21 address. Here it is here.

22 **Ms. Hollingsworth:** There are multiple addresses on
23 that---

24 **Mr. Johnson:** Obviously those addresses were picked up
25 through the City of Columbia water department---

1 **The Court:** Okay.

2 **Mr. Johnson:** ---which I say that it is a violation of
3 my constitutional right for him to go through the City of
4 Columbia water department to get these multiple addresses
5 when---

6 **The Court:** Did you not file addresses---

7 **Mr. Johnson:** Here we go right here.

8 **The Court:** Okay. Here's -- here's the bottom line:
9 You are not disputing that you received a copy of this
10 complaint. You're on notice that this action was pending.

11 **Mr. Johnson:** After the fact.

12 **The Court:** After the bankruptcy.

13 **Mr. Johnson:** After they've already filed the affidavit
14 for default.

15 **The Court:** You're trying to say you didn't know
16 anything about this action until March 2010?

17 **Mr. Johnson:** No, it's not that I didn't know anything
18 about it. I didn't have a copy of the documents that they
19 had filed with the court. I went up there and later after
20 talking with Gabriel---

21 **The Court:** But you understand that they tried to serve
22 you by process server, were unsuccessful, so then they served
23 you by order of publication which is proper because they got
24 a court order saying that they could do that, and by
25 publication they publicize it in "The Star Reporter" three

1 weeks in a row, and so that's considered notice.

2 **Mr. Johnson:** I understand. Also, if it please the
3 Court, if you'd look at this letter here, even the attorney
4 for Nix (phonetic) wrote to the clerk of court because she
5 was getting ready to dismiss the action. That's how confused
6 she was.

7 **Ms. Hollingsworth:** That's not what that says, Your
8 Honor.

9 **Mr. Johnson:** And she wanted to make certain that it
10 stayed on the docket. I never got any formal communications
11 of that information.

12 **The Court:** Well, I don't interpret the letter that she
13 said -- in terms of keeping the case open, she's basically
14 saying she's going to file an affidavit of default, and so,
15 therefore, the case would remain on the docket because before
16 the case, she filed a notice of bankruptcy to stay it so that
17 nobody would be harassing you or requiring you to be here
18 until your bankruptcy proceedings were resolved.

19 But I will make the finding that you have been duly
20 notified of the proceedings in terms of the complaint here.
21 There was an attempt at personal service, but then finally
22 they, meaning the plaintiff, had gone through order of
23 publication, that they have appropriately submitted their
24 default judgment papers including the open-end disbursement
25 receipt plus form, the certificate of title, the affidavit of

1 the statement of the account, and the affidavit of attorneys
2 costs and fees, that they've also indicated that the
3 bankruptcy proceeding through the order appropriately filed
4 with their documents as exhibit D. -- there was an order
5 dismissing that case with prejudice. The bankruptcy
6 proceedings were filed in February 2009 but dismissed in
7 April 2009.

8 This affidavit of default is March of 2010 that you have
9 indicated on the record that you've had discussions with Ms.
10 Griggs trying to negotiate this which was very appropriate,
11 that once somebody has a complaint filed against them that
12 they can try and negotiate any type of settlement or
13 resolution of any form with that particular party or their
14 attorney. Do you have anything else to add, sir?

15 **Mr. Johnson:** I add lastly that my position is that at
16 the time that I was served again, on her complaint and on her
17 motion and notice of motion the 30 days started overzealously
18 with her and she filed a default -- motion for default ever
19 since February the 26th which was---

20 **The Court:** Of what year?

21 **Mr. Johnson:** Of 2009. But she was using the first date
22 of service which was from the 23rd of January through
23 February the 26th and using four days of enlargement for me
24 to answer, and then on the 27th that's when I filed for the
25 bankruptcy. It was my understanding that she had to serve

1 me---

2 **The Court:** Okay. Well, let's -- let's start before you
3 even filed bankruptcy. This action was filed in September
4 2008.

5 **Mr. Johnson:** Which I---

6 **The Court:** Is that correct, Ms. Hollingsworth?

7 **Mr. Johnson:** ---had no notice.

8 **Ms. Hollingsworth:** That is correct, Your Honor.

9 **The Court:** But they tried to serve you by personal
10 service. That's why you don't have notice because they could
11 not find you---

12 **Mr. Johnson:** But I---

13 **The Court:** ---but then the -- hold on. And then the
14 order of publication -- remind the Court of those dates.

15 **Ms. Hollingsworth:** January 9th of 2009 -- we petitioned
16 for it on January 9th of 2009, received an order from the
17 clerk allowing publication. Publication commenced
18 January 23rd, 2009.

19 **The Court:** Okay. So publication was in 2009, January,
20 before you even filed for bankruptcy. So you would have been
21 placed on notice of the action then. So---

22 **Mr. Johnson:** But I didn't get notice.

23 **The Court:** ---that's prior to bankruptcy. Then the
24 bankruptcy was stayed. Well -- but, well, when they cannot
25 get you by personal service, they are entitled to seek an

1 order from the Court to serve you by publication which means
2 that you would happen to be reading legitimate newspapers
3 that people might read and then that would put you on notice
4 if they can't personally find you.

5 And so she has appropriately served you way before you
6 actually filed bankruptcy. Then the bankruptcy was stayed,
7 this action, and then it was dismissed. So that brings this
8 action forward. So technically she's able to go back to the
9 January 2009 date in terms of when you were served. When you
10 didn't appropriately respond within 30 days, then you're held
11 in default at that time.

12 **Mr. Johnson:** Well, I still say, Your Honor, that
13 they're using the date of first publication to move zealously
14 to get a default judgment---

15 **The Court:** The default is not filed until March 2010,
16 but they did their publication in January 2009.

17 **Mr. Johnson:** Well, hold it a second. Let me -- let me
18 look at this right here. It's an affidavit of default that
19 was February the -- February the 26th. The affidavit of
20 default and non-military service that Mr. Johnson -- this was
21 February the 26th of 2009. That's when this was filed, and
22 I've got a copy of it right here.

23 **The Court:** I've got it as well, and that's as a result
24 of the failure for you to respond to their publications that
25 began in January of 2009.

1 **Mr. Johnson:** And they filed on the 26th, and in essence
2 I'm saying that it was unconstitutional for them to
3 accelerate for filing this right here on February 26th when
4 it should have been from February the 23rd which was the last
5 date of publication for the 30 days.

6 **The Court:** The last date of publication was
7 February 6, 2009.

8 **Mr. Johnson:** February the 6th. I'm sorry. February
9 the 6th, 2009, and they overzealously ran to the---

10 **The Court:** Even if they had filed their affidavit of
11 default overzealously, in your words, you still are in
12 default from the February 6, 2009, date because no court had
13 any proceeding that was prejudicial to you.

14 **Mr. Johnson:** Well, it's my understanding that I
15 wouldn't have been in default until March the 6th of 2009, 30
16 days after---

17 **The Court:** Well, and that -- and you still would be in
18 default at that date and---

19 **Ms. Hollingsworth:** I understand what he's saying, Your
20 Honor, but it doesn't -- nothing has happened in the case
21 because we've been attempting to repossess. There's a
22 foreclosure action. These parties -- a lot has been going
23 on, but they just have not---

24 **Mr. Johnson:** Well---

25 **The Court:** Okay. Okay. Here is the Court's finding:

1 I'm holding you in default. I'm going to ask Ms.
2 Hollingsworth to do the order. I will note that he has an
3 issue with respect to the February 6, 2009, date. So he is
4 not technically in default until 30 days after that last
5 order of publication. Because the credit union sought an
6 order of publication for those three weeks, then technically
7 let him have received---

8 **Ms. Hollingsworth:** Yes, Your Honor.

9 **The Court:** ---notice of them and we'll hold in
10 default---

11 **Ms. Hollingsworth:** Thirty days from the third week's
12 date of publication.

13 **The Court:** Right. Right. Okay.

14 **Mr. Johnson:** I just want to put notice on the Court
15 that I'll appeal it.

16 **The Court:** That's okay. I'm fine. Never offended by
17 that. That's your right.

18 **Ms. Hollingsworth:** Thank you, Your Honor. I appreciate
19 your time this morning.

20 **The Court:** Okay.

21 **Mr. Johnson:** Thank you, Your Honor.

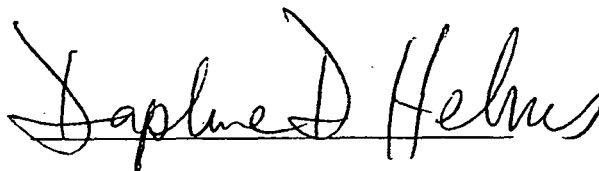
22 **The Court:** Okay. Thank you.

23 (Whereupon, the proceedings were concluded. There were
24 no exhibits introduced.)
25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 26th of July, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 9, 2011

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter

Second, with Service of Process not having been perfected, there can not ^{be} a default and judgment by default. Mr. Johnson is entitled to notice and opportunity to be heard and should be given an opportunity to answer the complaint.

Third, respectfully, the court should not proceed with a judgment when proper notice has not been perfected.

Defendant hereby request Plaintiff's request for Default Judgment should be denied.

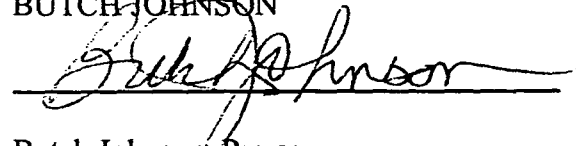
Defendant hereby request Plaintiff's request for Order awarding attorney's fees and expenses should be denied.

Defendant hereby request Plaintiff's request for order authorizing the Sheriff of Richland County, South Carolina to recover the BMW should be denied.

March 1, 2010

Columbia, South Carolina

BUTCH JOHNSON

A handwritten signature in cursive script, appearing to read "Butch Johnson", written over a horizontal line.

Butch Johnson, Pro se
312 Oak Brook Drive
Columbia, SC 29223

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Palmetto Citizens ^{Federal} Credit Union)
)
Plaintiff,)
)
vs.)
)
Butch Johnson,)
)
Defendant.)

IN THE CIRCUIT COURT

Civil Action No. 2008-CP-40-6779

CERTIFICATE OF SERVICE

JEANE T. W. MCBRIDE
C.G.P. & G.S.

2010 MAR -1 AM 10:01

FILED

The undersigned, Butch Johnson hereby certifies that on the 1st day of March, 2010, he caused a copy of the Reply to Notice of Motion and Motion for Default Judgment to be placed in an envelope with first-class postage, prepaid and mailed to:

Suzanne Taylor Graham Grigg
NEXEN PRUET, LLC
Attorney for Palmetto Citizens ^{Federal} Credit Union
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202


Butch Johnson, Pro Se
312 Oak Brook Drive
Columbia, South Carolina 29223

March 1, 2010

Columbia, South Carolina

244

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Palmetto Citizens Federal Credit Union,

Case No. 2008-CP-40-6779

Plaintiff,

vs.

Butch Johnson,

Defendant.

**ORDER GRANTING DEFAULT
JUDGMENT AND ORDER OF
POSSESSION**

JEANETTE W. McBRIDE
P. & G.S.

2010 AUG 16 AM 9:23

RICHLAND COUNTY
FILED

This matter was before the Court on Plaintiff Palmetto Citizens Federal Credit Union's ("Palmetto Citizens FCU") Motion for Default Judgment filed on March 2, 2010. Present and appearing before the Court were counsel for the Plaintiff, Jennifer J. Hollingsworth, Esquire, and the Defendant, Butch Johnson, appearing *pro se*. The Defendant filed a Reply to the Motion for Default on March 1, 2010.

Having reviewed the file and hearing the arguments of the parties on July 26, 2010, I make the following findings of fact and conclusions of law:

1. The matter was commenced by a Summons and Complaint filed September 19, 2008, seeking a judgment against the Defendant and seeking possession of Palmetto Citizens FCU's collateral (described below). The Plaintiff attempted to personally serve the Defendant with the lawsuit through two different process servers from November 14, 2008 through December 6, 2008, as evidenced by the Affidavits of Non-Service filed with the Court on January 9, 2009.

45

#1/24/09

SCANNED

2. By Order of Publication dated January 9, 2009, the Defendant was served by publication for three consecutive weeks commencing on January 23, 2009 through February 6, 2009.

3. This matter was temporarily stayed from February 27, 2009, as a result of the Defendant's filing of a Chapter 13 bankruptcy, which was dismissed with prejudice by Order of the Bankruptcy Court dated April 16, 2009.

4. The Defendant stated on the record that he had received copies of the pleadings and further stated that he had attempted over a period of time to negotiate a resolution of the lawsuit with counsel for Palmetto Citizens FCU. I find that the Defendant has been properly served with the Summons and Complaint pursuant to publication in The Columbia Star of these proceedings.

5. It appears to the Court that the Defendant has failed to file an answer or otherwise respond to the Complaint.

6. It appears to the Court from the Complaint and the Exhibits thereto that the outstanding amount due and owing to Palmetto Citizens FCU by the Defendant as of February 16, 2010, is Twenty-Nine Thousand Fifteen and 82/100 Dollars (\$29,015.82), and that Palmetto Citizens FCU is entitled to judgment in its favor against the Defendant in the amount of \$29,015.82, plus interest that continues to accrue.

7. It further appears to the Court from the Complaint and the Exhibits thereto that Palmetto Citizens FCU is entitled to reasonable attorneys' fees and expenses incurred in connection with this matter, and that attorneys' fees and expenses totaling \$3,466.02, as set forth in the Affidavit of Attorneys' Fees and Expenses filed by Palmetto Citizens FCU's counsel are

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23001

reasonable, and that Palmetto Citizens FCU is entitled to an award of attorneys' fees and expenses in that amount.

8. It further appears to the Court from the Complaint and the Exhibits thereto that Palmetto Citizens FCU is entitled to interest, which continues to accrue on the amount due at a rate of 5.95% per annum from February 26, 2010, until the judgment is paid in full.

9. It further appears to the Court that the Defendant has failed to surrender the collateral, specifically a 2002 BMW (the "BMW"), 745LI automobile, VIN #WBAGN63442DR03665 to Palmetto Citizens FCU.

10. It further appears to the Court that Palmetto Citizens FCU is entitled to enforce its security interest in and lien on the BMW, and that Palmetto Citizens FCU is entitled to possession of the BMW.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant is in default in this matter, and Palmetto Citizens FCU is entitled to a judgment against the Defendant for the outstanding indebtedness plus attorneys' fees and costs in the combined sum of Thirty-Two Thousand Four Hundred Eighty-One and 84/100 Dollars (\$32,481.84);

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Palmetto Citizens FCU is entitled to possession of the BMW and to dispose of the BMW, with the proceeds being applied toward payment of the judgment indebtedness owed by the Defendant to Palmetto Citizens FCU;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Richland County Sheriff, or his agent, shall recover the BMW and place it with Palmetto Citizens FCU or its agent;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall

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844

not destroy, damage, convey, dispose of or use so as to impair the value of the BMW; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the interest shall accrue on this judgment at the contract rate of 5.95% per annum, until the judgment is paid in full.

AND IT IS SO ORDERED.



The Honorable J. Michelle Childs
Presiding Judge
Fifth Judicial Circuit

August 12th, 2010.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,
Plaintiff,
vs.
Butch Johnson,
Defendant.

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

Case No. 2008-CP-40

AFFIDAVIT AND PETITION FOR
ORDER OF PUBLICATION

RICHLAND COUNTY
FILED
2009 JAN -9 PM 4:50
JEANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED before me, Suzanne Taylor Graham Grigg, who being duly sworn, deposes and says:

1. She is one of the attorneys for the Plaintiff in the above entitled action.
2. A cause of action exists in favor of the Plaintiff and against the Defendant above named for the purpose of claim and delivery of a 2002 BMW 745LI automobile (the "Automobile") subject to the Plaintiff's security interest.;

3. She is informed and believes that Defendant Butch Johnson ("Defendant Johnson") is the owner of the Automobile, and that the Automobile is the proper subject of a claim and delivery action by the Plaintiff;

4. The Plaintiff has been unable with due diligence to make or have made service of the Summons and Complaint in said action upon Defendant Johnson, as evidenced by the Affidavit[s] of Non-Service attached hereto as Exhibits "A" and "B", and incorporated herein by reference;

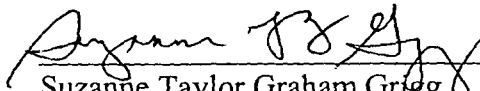
5. The Plaintiff is informed and believes that Defendant Johnson may be avoiding service of the foregoing documents, and the true whereabouts of Defendant Johnson is unknown to the Plaintiff. According to the Plaintiff's records, the last known address for Defendant

RICHLAND COUNTY
FILED
2009 JAN -9 PM 4:18
JEANETTE W. McBRIDE
C.C.P. & G.S.

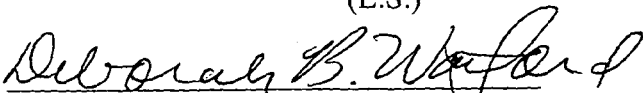
Johnson is: 312 Oak Brook Drive, Columbia, South Carolina. Additional addresses for Defendant Johnson are: 4949 Two Notch Road, Columbia, South Carolina; 1410 Red Ridge Terrace, Columbia, South Carolina; 5801 MacKay Street, Columbia, South Carolina, and 1207 Lakeside Drive, Conway, South Carolina 29536;

6. Defendant Johnson cannot be found at any of the foregoing addresses or within this state, and the true place of residence of Defendant Johnson is unknown and cannot with reasonable diligence be ascertained by the Plaintiff and its attorneys.

WHEREFORE, the Plaintiff hereby petitions this court to issue its Order authorizing the service of the Summons and Notice of Filing of Complaint in this action on Defendant Johnson by publication.


Suzanne Taylor Graham Grigg
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
804-771-8900
Attorneys for Plaintiff

SWORN and subscribed to before me
this 9 day of Jan., 2009
(L.S.)


Notary Public for South Carolina
My commission expires 10-22-11

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AFFIDAVIT OF NON SERVICE

STATE OF SOUTH CAROLINA

PALMETTO CITIZENS
FEDERAL CREDIT UNION

COUNTY OF RICHLAND

-VS-

BUTCH JOHNSON

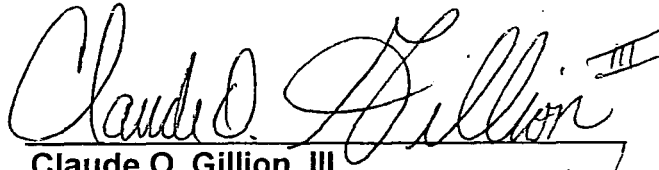
DOCKET# 08-CP-40-6779

2009 JAN -9 PM 4:18
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Claude O. Gillion, III, being duly sworn, does hereby certify that the
CIVIL ACTION COVER SHEET;
SUMMONS AND COMPLAINT, in the above-entitled action, which is
hereto attached, came into my hands for service on NOVEMBER 14th
20 08, and that I have made diligent search and inquiry for the aboved named

(~~witness~~/defendant), BUTCH JOHNSON, upon whom to make
legal service of the aforementioned papers. After much search and inquiry,
I have been unable to find said (~~witness~~/defendant) in the State of South
Carolina, upon whom to make service thereof.



Claude O. Gillion, III
Gillion's Process Service, Inc.
P.O. Box 25292
Columbia, South Carolina 29224

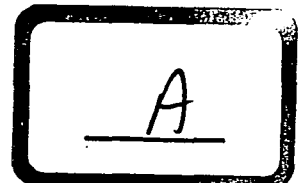
Sworn to before me this
19th day of NOVEMBER 2008


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires November 3, 2018

MADE TOTAL OF 5 TRIPS TO 312 OAK BROOK DR.
MADE TOTAL OF 4 TRIPS TO 4949 TWO NOTCH .,
MADE 1 TRIP TO 1410 RED RIDGE TERRACE; AND
MADE 1 TRIP TO 5801 MACKAY ST., RECEIVED
CALL FROM BUTCH JOHNSON'S PHONE STATING
HE WAS NOT HIM, BUT KNEW IT WAS; TRIED TO
SERVE HIM AT TWO NOTCH ADDRESS, BUT HE
DROVE OFF; RED RIDGE & ALSO MACKAY STS.,
NO ONE EVER HEARD OF HIM; AVOIDING SERVICE

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AFFIDAVIT OF SERVICE

State of South Carolina

County Of Richland

Common Pleas Court

Case Number: 2008-CP-40-6779

Plaintiff:

Palmetto Citizens Federal Credit Union,

Vs

Defendants:

Butch Johnson,

Received by Regional Investigations, Inc. to be served on **Butch Johnson, address unknown**, I Gerald Rounbehler, being duly sworn, depose and say that on n/a day of n/a 2008 at n/a a.p.m. executed service by delivering a true copy of the **Civil Action Coversheet, Summons, Complaint, and Verification with Exhibits A, and B** in accordance with state statutes in the manner marked below:

RICHLAND COUNTY
FILED
2009 JAN - 9 PM 4:18
JEANETTE W. MCBRIDE
C.C.P. # 08-0000000000

() INDIVIDUAL SERVICE: Served personally to the within-named.

() SUBSTITUTE SERVICE: By Delivering to: _____, as _____

A person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

() OTHER SERVICE: As described by serving:

(X) NON SERVICE: Due to reasons detailed in Comments below.

() MILITARY STATES: Y N If yes, what branch: _____

() MARITAL STATUS: If Married, spouse's name: _____

COMMENTS: 11/26/08 approx. 6:41pm- no lights or vehicles at the 2685 Mt. Olive location;
11/28/08 approx. 6:30am & 5:30pm- no lights or vehicles at the 2685 Mt. Olive location;
11/28/08 approx. 4:48pm- Per George F. Livingston, Sr. VP for Primerica, 1207 Lakeside Dr, Ste 100, Conway, SC – has never heard of Butch Johnson.
12/1/08 approx 9:15am & 4:46pm & 6:34pm- no lights or vehicles at the 2685 Mt. Olive location;
12/1/08 approx. 9:45am- Per individuals at Sunbelt Realty, 1207 Lakeside Dr., Ste 101, - Alcon moved from this location 5 years ago do not know Butch Johnson;
12/1/08 approx. 9:57am- Per individuals at SC Health Dept., 900 4th St., Conway, never heard of Alcon or Johnson;
12/1/08 approx. 10:20am- Per resident - no Butch Johnson at 111 Quail Run, Conway, SC;
12/1/08 affiant submitted a USPS Change of Address Form, "No change of address order on file", see attached;
12/4/08 approx 2:10pm- no lights or vehicles at the 2685 Mt. Olive location;
12/6/08 approx. 4:36pm- no lights or vehicles at the 2685 Mt. Olive location;

4

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B

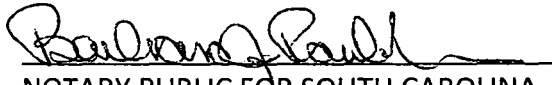
12/8/08 affiant submitted a National Resource Information Search for Defendant, Butch Johnson and received the following results: Current address as of 8/08:

Butch Johnson
312 Mount Olive Road
Columbia, SC 29223

Age Sex Race Height Weight Hair

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service is made.

SWORN TO and Subscribed before me
This 11th day of December 2008.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/25/2018


Gerald Rounbehler, PI, PS
Regional Investigations, Inc.
PO Box 1089
Little River, SC 29566
843-281-8178

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Exhibit A

SERVICE BY PUBLICATION

South Carolina Code of Laws

§15-9-710, et. seq.

- ◆ File Motion for Service by Publication (Form #122PC)

AND

a separate Affidavit indicating that the particular person needing to be served cannot be located after due diligence (include what action was taken to locate this person, such as Internet search, detective work, mailings, county property records, telephone book, etc.). Probate Judge will then sign the Order on Form #122PC directing publication. (See S. C. Code of Laws, §15-9-740.)

- ◆ Schedule a hearing allowing publication and response times; date and time to be included on Summons publication (see sample) in addition to requirements of §15-9-740.

- ◆ Publish Summons once a week for 3 weeks in a newspaper printed in the county most likely to give notice to the person to be served (see §15-9-740) Be sure the decedent's name is included in the publication.

AND

mail copy of pleadings to last known address unless such address is not known or cannot be ascertained.

- ◆ File newspaper Affidavit of Publication at the Probate Court.
- ◆ If no response after 30 days from last publication date, file Affidavit of Default.

[If minors or incapacitated adults are to be served, see SCRPC, Rule 55(b)(2), as it pertains to Guardians ad Litem.]

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	Case No. 92ES2302146
IN RE: Estate of GERTRUDE JEFFERSON	)	
GREEN, Deceased	)	
Alice Land,	)	
Petitioner,	)	
vs.	)	
Ralph Green, Gary White, and	)	
Ben Black,	)	
Respondents	)	

SUMMONS

Sample

TO: Ralph Green, Respondent above-named:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Petition on the subscriber at his office located at 101 Main Street, Wonderville, SC 29106, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for a default judgment for the relief demanded in the Petition.

This shall serve also as notice of hearing set for Wednesday, March 15, 1995, at 2:00p.m.

Charles H. Finney
Charles H. Finney
Attorney for Petitioner
P. O. Box 1001
Wonderville, SC 29106
864/233-0987

Date: January 3, 1995

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Richland County Common Pleas
CASE HISTORY FOR CASE 2008CP4006779

Exhibit B

Palmetto Citizens Federal Credit Union vs Butch Johnson

FILED DATE: 9/19/2008

CASE TYPE: CP/Debt Collections 110

STATUS: Dismissed

JUDGE:

CASE PARTIES:

Plaintiff Palmetto Citizens Federal Credit Union

Plaintiff Attorney Grigg, Suzanne G.

Nexsen Pruet Adams Kleemeier, L L C, P. O . Drawer 2426, Columbia, SC 29202-2426

Defendant Johnson, Butch

Defendant Pro Se Johnson, Butch

312 Oak Brook Drive, Columbia, SC 29223

CASE HISTORY FOR CASE 2008CP4006779

Palmetto Citizens Federal Credit Union

Age: Unknown

DOB: Unknown

DL#:

SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
------	----------	-------------	-----------	--------------

Total:

DATE	TIME	EVENT DESCRIPTION
09/19/2008	1:41 pm	Filing recorded: ADR/Alternative Dispute Resolution (Workflow)
09/19/2008	1:39 pm	Filing recorded: Summons & .Complaint
09/29/2008	3:34 pm	Filing recorded: Verification/Verified
01/09/2009	4:49 pm	Filing recorded: Affidavit/Affidavit of & Petition For Order Of Publication
01/09/2009	4:50 pm	Order/Publication (Jeanette W McBride)

Print Date: 08/06/2010
Print Time: 3:28:00PM
Requested By: COCCANNON

CaseHistory.rpt

Page 1 of 2

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CASE HISTORY FOR CASE 2008CP4006779

02/10/2009	8:26 am	Filing recorded: Affidavit/Publication
02/26/2009	12:47 pm	Filing recorded: Affidavit/Default & Non Military Service For Butch Johnson
02/26/2009	12:00 am	COCMCFALL recorded the following Case Note: Affidavit/Default & Non Military Service For Butch Johnson Following Service By Publication
03/19/2009	8:39 am	Filing recorded: Notice/Notice Of Bankruptcy Filing
03/01/2010	3:24 pm	Filing recorded: Certificate of Service
03/01/2010	3:20 pm	Filing recorded: Reply to Notice of Motion and Motion for Default Judgment
03/02/2010	10:58 am	Filing recorded: Service/Certificate Of Service
03/02/2010	10:57 am	Filing recorded: Reply to Notice of Motion & Motion for Default Judgment
03/02/2010	10:41 am	Motion for Default Judgment
03/02/2010	10:42 am	Filing recorded: Affidavit of Statement of Account
03/02/2010	10:43 am	Filing recorded: Affidavit of Attorneys' Fees and Costs
03/02/2010	10:43 am	Filing recorded: Certificate of Service
03/02/2010	4:19 pm	Motion/Motion Filing Fee
07/06/2010	12:00 am	COCGUNTER recorded the following Case Note: Motion MMFDEF - Motion for Default Judgment added to Roster: 105 - MOTION ROSTER JULY 26, 2010 COURTROOM 2-E: Roster Begin Date 20100726 - End Date 20100726
07/12/2010	9:42 am	Filing recorded: Notice of Hearing
07/12/2010	9:42 am	Filing recorded: Certificate of Service
07/21/2010	11:43 am	Filing recorded: Certificate of Service
07/21/2010	11:40 am	Filing recorded: Affidavit and Memorandum
07/26/2010	12:00 am	COCJACOBS recorded the following Case Note: Affidavit and Memorandum of Defendent Butch Johnson

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,
Plaintiff,
vs.
Butch Johnson,
Defendant.

IN THE CIRCUIT COURT

Case No. 2008-CP-40-67

JEANETTE W. NEBRIDE
CLERK, C.P. & G.S.

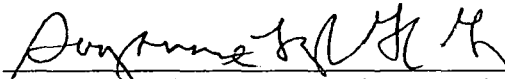
2009 MAR 19 PM 2:25

RICHLAND COUNTY
FILED

NOTICE OF BANKRUPTCY FILING

PLEASE TAKE NOTICE that on February 27, 2009, the above-named defendant, Butch Johnson, filed for Chapter 13 bankruptcy protection in the United States Bankruptcy Court, District of South Carolina, Case No. 09-01455-jw. The Plaintiff is informed and believes that this action is hereby stayed, pursuant to 11 U.S.C. §362 of the United States Bankruptcy Code. In the event that Defendant Johnson's bankruptcy case is dismissed, the Plaintiff shall so advise the Court and continue with the proceedings as if no bankruptcy had been filed.

RESPECTFULLY SUBMITTED on this the 17th day of March 2009 at Columbia, South Carolina.


Suzanne Taylor Graham Grigg, Esquire
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
Phone: (803) 771-8900
Fax: (803) 253-8277
Attorneys for the Plaintiff

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STATE OF SOUTH CAROLINA)

IN THE CIRCUIT COURT)

COUNTY OF RICHLAND)

Palmetto Citizens Federal Credit Union)

Civil Action No. 2008-CP-40-6779)

Plaintiff,)

AFFIDAVIT AND MEMORANDUM)
OF DEFENDANT BUTCH JOHNSON)

Vs.)

Butch Johnson,)

Defendant.)

2010 JUL 21 PM 3:15
JANETTE W. MCBRIDE
C.C.P. & G.S.

FILED

TO: SUZANNE TAYLOR GRAHAM GRIGG, FOR PALMETTO CITIZENS FEDERAL CREDIT UNION

PERSONALLY APPEARED BEFORE ME, Butch Johnson, who being duly sworn, deposes and says:

That he is the Defendant in the above-captioned matter do hereby respond and objects to and he opposes the Plaintiff's Motion for Default Judgment and submits the following:

That Defendant seeks denial of Rule 55 of the South Carolina Rules of Civil Procedure for entrance of judgment in Plaintiff's favor against Defendant, Butch Johnson.

PLAINTIFF IS NOT ENTITLED TO A DEFAULT JUDGMENT AS PLAINTIFF HAS ACTED UNCONSCIONABLE IN ITS EFFORTS OF SERVICE OF PROCESS OF THE INITIAL COMPLAINT.

Plaintiff alleges in the Complaint. As stated in the Affidavit of Default and Non-Military Service for Butch Johnson Following Service by Publication (the "Affidavit of Default") filed with the Court, the Defendant has failed to respond to the Complaint filed with the Court on September 19, 2008, within thirty (30) days of service of the same.

Pursuant to the Court's order filed January 9, 2009, the Summons and Notice of Filing of Complaint were printed in *The Columbia Star*, a newspaper published in and of general circulation in Richland County, South Carolina, for three consecutive weeks, beginning on January 23, 2009, and thereafter, on January 30, 2009 and February 6, 2009, and a copy of the

Summons and Complaint was sent via certified mail, postage prepaid to Defendant Butch Johnson at his last known address.

More than thirty (30) days have elapsed since the first publication of the foregoing pleadings, and no responsive pleading or motion contemplated under Rule 12, SCRCp, has been served upon Plaintiff's attorney by said defendant in this matter; and,

Said Defendant is now in default.

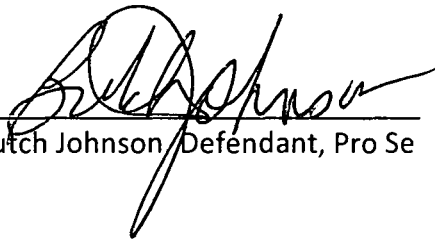
On February 27, 2009, the Defendant filed for protection under Chapter 13 of the United States Bankruptcy Code. Upon the bankruptcy filing, this action was stayed, pursuant to 11 U.S.C. Section 362 of the Bankruptcy Code. However, the Defendant's bankruptcy case has been dismissed by Order of the Bankruptcy Code filed April 16, 2009, and this action may now proceed. A copy of the Order Dismissing Case With Prejudice is attached hereto as Exhibit "D" and incorporated herein by reference.

Defendant submits and hereby states under oath that the Plaintiff Palmetto Citizens Federal Credit Union has not complied with the Service by Publication, South Carolina Code of Laws, Section 15-9-710. (Exhibit A) If no response after 30 days from last publication date, file Affidavit of Default. Plaintiff's last Service by Publication date was February 6, 2009, and Defendant, Butch Johnson filed for Chapter 13 bankruptcy protection in the United States Bankruptcy Court, District of South Carolina, Case No. 09-01455-jw on February 27, 2009. This action was stayed, pursuant to 11 U.S.C. Section 362 of the United States Bankruptcy Code.

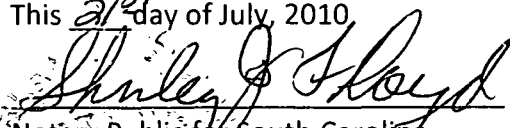
Pursuant to In re Meadows, 05-50086-PWB (GANBC), IN Re: Darrell Ryan Meadows, Debtor. Darrell Ryan Meadows, Plaintiff, v, Carter Haggler, d/b/a Hagler personal Properties, Defendant. No. 05-50086-PWB; Adversary No. 07-04033; United States Bankruptcy Court,

Northern District of Georgia, Rome Division, April 8, 2010, supports Defendant's reason to request this Honorable Court to deny Plaintiff's Motion for Default Judgment for lack of proper Service of Process to allow Defendant the adequate time to answer the initial Complaint dated September 19, 2008.

Defendant further submits that the actions of Plaintiff seeking a Default Judgment is unconscionable and unconstitutional, and therefore should be denied and dismissed with prejudice.


Butch Johnson, Defendant, Pro Se

SWORN and subscribed to before me
This 21st day of July, 2010


Notary Public for South Carolina

My Commission Expires: 12/17/18

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Exhibit A

SERVICE BY PUBLICATION

South Carolina Code of Laws
§15-9-710, et. seq. ✓

- ◆ File Motion for Service by Publication (Form #122PC)

AND

a separate Affidavit indicating that the particular person needing to be served cannot be located after due diligence (include what action was taken to locate this person, such as Internet search, detective work, mailings, county property records, telephone book, etc.). Probate Judge will then sign the Order on Form #122PC directing publication. (See S. C. Code of Laws, §15-9-740.)

- ◆ Schedule a hearing allowing publication and response times; date and time to be included on Summons publication (see sample) in addition to requirements of §15-9-740.

- ◆ Publish Summons once a week for 3 weeks in a newspaper printed in the county most likely to give notice to the person to be served (see §15-9-740) Be sure the decedent's name is included in the publication.

AND

mail copy of pleadings to last known address unless such address is not known or cannot be ascertained.

- ◆ File newspaper Affidavit of Publication at the Probate Court.

- ◆ If no response after 30 days from last publication date, file Affidavit of Default. ✓

[If minors or incapacitated adults are to be served, see SCRCF, Rule 55(b)(2), as it pertains to Guardians ad Litem.]

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
COUNTY OF GREENVILLE	)	Case No. 92ES2302146
IN RE: Estate of GERTRUDE JEFFERSON	)	
GREEN, Deceased	)	
Alice Land,	)	
Petitioner,	)	
vs.	)	
Ralph Green, Gary White, and	)	SUMMONS
Ben Black,	)	Sample
Respondents	)	

TO: Ralph Green, Respondent above-named:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Petition on the subscriber at his office located at 101 Main Street, Wonderville, SC 29106, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for a default judgment for the relief demanded in the Petition.

This shall serve also as notice of hearing set for Wednesday, March 15, 1995, at 2:00p.m.

Charles H. Finney
Charles H. Finney
Attorney for Petitioner
P. O. Box 1001
Wonderville, SC 29106
864/233-0987

Date: January 3, 1995

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

CASE NO.: 2008-CP-_____-

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

COMPLAINT

(Claim and Delivery)
(Non-Jury)

RICHLAND COUNTY
FILED
2008 SEP 19 PM 1:40
BARBARA A. SCOTT
C.C.C. & C.S.

Plaintiff Palmetto Citizens Federal Credit Union ("PCFCU"), by and through its undersigned attorney, hereby alleges and states its complaint against Defendant Butch Johnson ("Defendant Johnson"), as follows:

THE PARTIES

1. PCFCU is a federally chartered federal credit union, and it is authorized to conduct business in the State of South Carolina.
2. Upon information and belief, Defendant Johnson is a citizen and resident of Richland County, South Carolina.
3. PCFCU is further informed and believes that the personal property described herein, which is the subject of this action, is located in Richland County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Claim and Delivery)

4. On or about June 14, 2004, Defendant Johnson executed that certain Open-End Disbursement Receipt Plus (the "Note") in favor of PCFCU for a loan in the original principal

amount of \$59,414.00. The Note was secured by a purchase money security interest in a 2002 BMW 745LI automobile, VIN WBAGN63442DR03665 (the "Automobile"). A copy of the Note is attached hereto as "Exhibit A" and incorporated herein by reference.

5. In order to better secure payment of the amounts due under the Note, Defendant Johnson granted PCFCU a security interest in the Automobile. PCFCU's lien is recorded on the face of the Certificate of Title (the "Title") for the Automobile. A copy of the Title is attached hereto as "Exhibit B" and is incorporated herein by reference.

6. Upon information and belief, PCFCU holds a first lien on the Automobile, as denoted on the Title.

7. PCFCU asserts that Defendant Johnson is in default under the terms of the Note by his failure to make the monthly installment payments to PCFCU due under the Note. Specifically, Defendant Johnson is in the arrears on the loan payments in the amount \$4,888.30 and the payments on the loan are now due for April 25, 2008.

8. The obligations of Defendant Johnson under the terms and conditions of the Note are in default and PCFCU has accelerated payment of the debt due under the Note.

9. PCFCU has sent written notice of the default to Defendant Johnson in accordance with and conforming to state law. Defendant Johnson has failed to remit the amounts due and owing to PCFCU in compliance with the terms of the Note.

10. There is now due and owing to PCFCU under the Note, as of August 7, 2008, the principal amount of Twenty-Six Thousand Two Hundred Fifty-Four and 22/100 Dollars (\$26,254.22), plus accrued interest of Four Hundred Twelve and 24/100 Dollars (412.24) and

late fees of Seventy-Five and 00/100 Dollars (\$75.00) as of August 7, 2008, and other charges, including but not limited to reasonable attorneys' fees and other legal costs.

11. PCFCU is informed and believes that it is entitled to judgment against Defendant Johnson for the full amount of the indebtedness owed to it by Defendant Johnson, including reasonable attorneys' fees and the costs of this action.

12. PCFCU is informed and believes that Defendant Johnson is now in control or possession of the Automobile.

13. PCFCU is informed and believes that it is lawfully entitled to immediate possession of the Automobile by virtue of its perfected security interest in the Automobile.

14. PCFCU is informed and believes that it is entitled to have the Automobile repossessed by the Sheriff of Richland County, South Carolina, and placed in the hands of PCFCU, or one of its agents or assigns, to be disposed of in a commercially reasonable manner.

WHEREFORE, PCFCU prays that the Court:

(a) grant PCFCU judgment against Defendant Johnson in the amount of \$26,741.46, plus interest and other charges accruing after August 7, 2008, and reasonable attorneys' fees and other legal costs;

(b) order that PCFCU is entitled to immediate possession of the Automobile pursuant to S.C. Code Ann. §15-69-10 et. seq., as against Defendant Johnson and/or any other party in possession of the Automobile;

(c) order that the Sheriff of Richland County take possession of the Automobile and place PCFCU in possession of the Automobile;

-64

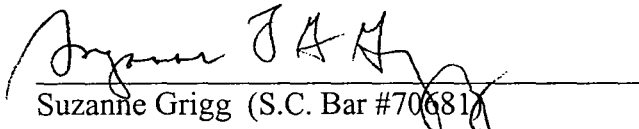
(d) order that PCFCU has the right to dispose of the Automobile, and that PCFCU is allowed to apply the proceeds from such sale to the indebtedness owed by Defendant Johnson to PCFCU, as provided by law;

(e) restrain and enjoin Defendant Johnson, his agents, servants, employees, or assigns from damaging, destroying, disposing of, or using so as to substantially impair the value of the Automobile during the pendency of this action or until further order of the Court;

(f) in the event the proceeds from the sale of the Automobile are insufficient to satisfy the indebtedness due under the Note, that the Court enter a deficiency judgment against Defendant Johnson for the difference remaining due to PCFCU; and,

(g) grant such other and further relief as the Court deems just and proper.

Respectfully submitted this the 16 day of September 2008, at Columbia, South Carolina.


Suzanne Grigg (S.C. Bar #70681)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Phone: (803) 771-8900
Facsimile: (803) 253-8277

Attorneys for Plaintiff Palmetto Citizens Federal Credit Union

65

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

CASE NO.: 2008-CP-_____-_____

Palmetto Citizens Federal Credit Union,
Plaintiff,

vs.

Butch Johnson,
Defendant.

VERIFICATION

(Claim and Delivery)
(Non-Jury)

RICHLAND COUNTY
FILED
2008 SEP 19 PM 1:40
BARBARA A. SCOTT
C.C.C. & G.S.

PERSONALLY APPEARED before me, Gabriel McFadden, who, being duly sworn, deposes and says that he is the Collection Manager for Palmetto Citizens Federal Credit Union, the Plaintiff in the foregoing action; that he has read the within Complaint; that based upon his own personal knowledge, the allegations contained in the Complaint are true and correct, except as to those things alleged upon information and belief, and as to those, he believes them to be true and correct.

PALMETTO CITIZENS FEDERAL
CREDIT UNION



Gabriel McFadden
Collections Manager

SWORN and subscribed to before me
this 9th day of September 2008.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 9/27/17

LOANLINER**PALMETTO
CITIZENS**

FEDERAL CREDIT UNION

P.O. Box 5846

Columbia, SC 29250

**Open-End Disbursement
Receipt Plus****BORROWER INFORMATION**

BORROWER 1 NAME

BORROWER 2 NAME

JOHNSON, BUTCH

111 QUAIL RUN

CONWAY SC 29528

ACCOUNT NUMBER
77579-L19.1DATE
08-14-2004**SECURITY OFFERED**

THE ADVANCE IS SECURED BY YOUR SHARES, ALL PROPERTY SECURING OTHER PLAN ADVANCES AND LOANS RECEIVED IN THE PAST OR IN THE FUTURE, AND THE FOLLOWING PROPERTY:

PROPERTY/MODEL	YEAR	I.D. NUMBER	VALUE	KEY NUMBER
BMW 745LI 2002 WBAGN63442DRO3685				

PLEDGE OF SHARES
AND/OR DEPOSITS SAVINGSACCOUNT
NUMBER *77579S1PLEDGE OF SHARES
AND/OR DEPOSITS SAVINGSACCOUNT
NUMBER *77579S1☐ **CONSUMER'S CLAIMS AND DEFENSES NOTICE** -- The following paragraph applies to the Advance only if the box is checked.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

SUBSEQUENT ELECTION FOR VOLUNTARY PAYMENT PROTECTION

You can now voluntarily elect to become insured with the coverage(s) shown below. In order for coverage to become effective you must meet all eligibility requirements stated in the Credit Insurance Application/Schedule. A statement of insurability must be completed if you are adding coverage more than 30 days after the date of your advance. Details of this insurance coverage are included in the Insurance Certificate which you received with your Credit Agreement. Ask us if you need a copy of the Insurance Certificate. You agree to the terms of the insurance election checked below and you authorize us to add the charges for the insurance to your outstanding balance each month. Your payment amount will increase or you will be required to make additional payments. Coverage election applies to the entire balance on this subaccount. Insurance rates are subject to change.

YOU ELECT THE FOLLOWING:

YES NO

MONTHLY LOAN BALANCE

NAME OF INSURED(S)

Single Credit Disability

☒

Joint Credit Disability

☒

Single Credit Life

☒

Joint Credit Life

☒**REPAYMENT TERMS**

DAILY PERIODIC RATE	ANNUAL PERCENTAGE RATE	INTEREST RATE IS:	OTHER FEES (Amount and Description)	NEW BALANCE THIS SUBACCOUNT
.015519%	5.690%			\$59,414.00
AMOUNT ADVANCED	PAYMENT AMOUNT	DATE DUE	PAYMENT FREQUENCY	LINE OF CREDIT LIMIT
\$59,414.00	\$977.68	7/25/2004	Monthly	\$59,414.00
				REMAINING LIMIT
				\$0.00

SIGNATURES

By signing below, or by endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree:

- (1) that the property described in the Security Offered section above ("Property") is security under the terms of the LOANLINER Credit and Security Agreement (the "Plan") for all amounts you owe under the Plan and that the property description is incorporated into and a part of the Plan;
- (2) that the Property is also security for any other loans, including but not limited to, any credit card loan that you have with the credit union now or in the future;
- (3) that you will make the payments disclosed above in accordance with the terms of the Plan; and
- (4) that if you are now electing credit insurance, you are voluntarily electing the coverage checked in the Subsequent Election for Voluntary Payment Protection section above.

X on OE Agreement

(SEAL) 8/14/2004

BORROWER 1 SIGNATURE

DATE

X

(SEAL) 8/14/2004

BORROWER 2 SIGNATURE

DATE

FOR CREDIT UNION USE ONLY

REQUESTED:

MEMBER PAYS
PREMIUM FOR:

CHECK NUMBER:

BRANCH NUMBER:

PROCESSED BY:

DATE

LOAN OFFICER COMMENTS:

LOAN OFFICER INITIALS

EXHIBIT**A**

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77579 - 419.1 ✓

STATE OF SOUTH CAROLINA CERTIFICATE OF TITLE OF A VEHICLE

VEHICLE IDENTIFICATION NUMBER 344DR03653	YEAR 2002	MAKE BMW	MODEL 745LT	NEW/USED USED
VEHICLE STYLE SA	DATE 08/26/2004	ODOMETER 42404	WEIGHT 4464	TITLE NUMBER 770750131288011-B

VEHICLE BRAND(S)
ACTUAL MILEAGE

LEGAL NAME OF OWNER(S)
JOHNSON, BUTCH
111 QUAIL RUN
CONWAY, SC 295268809

CUSTOMER NUMBER: 24023040

FIRST LIEN HOLDER
PALMETTO CITIZENS FEDERAL CREDIT UNION
PO BOX 4846
COLUMBIA, SC 292505846
DATE OF LIEN 07/14/2004

1ST LIEN RELEASED _____ (DATE)
BY _____
(AUTHORIZED AGENT)

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

KEEP IN A SAFE PLACE - ANY ALTERATION OR ERASURE VOIDS THIS TITLE

36168489

EXHIBIT

B

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

Case No. 2008-CP-40

AFFIDAVIT AND PETITION FOR
ORDER OF PUBLICATION

2009 JAN -9 PM 4:50
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

PERSONALLY APPEARED before me, Suzanne Taylor Graham Grigg, who being duly sworn, deposes and says:

1. She is one of the attorneys for the Plaintiff in the above entitled act
2. A cause of action exists in favor of the Plaintiff and against the Defendant above named for the purpose of claim and delivery of a 2002 BMW 745LI automobile (the "Automobile") subject to the Plaintiff's security interest.;

3. She is informed and believes that Defendant Butch Johnson ("Defendant Johnson") is the owner of the Automobile, and that the Automobile is the proper subject of a claim and delivery action by the Plaintiff;

4. The Plaintiff has been unable with due diligence to make or have made service of the Summons and Complaint in said action upon Defendant Johnson, as evidenced by the Affidavit[s] of Non-Service attached hereto as Exhibits "A" and "B", and incorporated herein by reference;

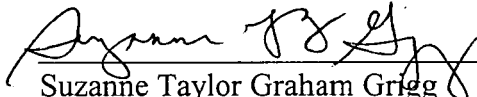
5. The Plaintiff is informed and believes that Defendant Johnson may be avoiding service of the foregoing documents, and the true whereabouts of Defendant Johnson is unknown to the Plaintiff. According to the Plaintiff's records, the last known address for Defendant

2009 JAN -9 PM 4:18
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

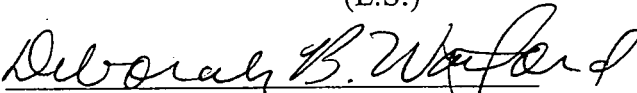
Johnson is: 312 Oak Brook Drive, Columbia, South Carolina. Additional addresses for Defendant Johnson are: 4949 Two Notch Road, Columbia, South Carolina; 1410 Red Ridge Terrace, Columbia, South Carolina; 5801 MacKay Street, Columbia, South Carolina, and 1207 Lakeside Drive, Conway, South Carolina 29536;

6. Defendant Johnson cannot be found at any of the foregoing addresses or within this state, and the true place of residence of Defendant Johnson is unknown and cannot with reasonable diligence be ascertained by the Plaintiff and its attorneys.

WHEREFORE, the Plaintiff hereby petitions this court to issue its Order authorizing the service of the Summons and Notice of Filing of Complaint in this action on Defendant Johnson by publication.


Suzanne Taylor Graham Grigg
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
804-771-8900
Attorneys for Plaintiff

SWORN and subscribed to before me
this 9 day of Jan., 2009
(L.S.)


Notary Public for South Carolina
My commission expires 10-22-11

AFFIDAVIT OF NON SERVICE

STATE OF SOUTH CAROLINA

PALMETTO CITIZENS
FEDERAL CREDIT UNION

COUNTY OF RICHLAND

-VS-

BUTCH JOHNSON

DOCKET# 08-CP-40-6779

2009 JAN -9 PM 4:18
JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

Claude O. Gillion, III, being duly sworn, does hereby certify that the
CIVIL ACTION COVER SHEET;
SUMMONS AND COMPLAINT, in the above-entitled action, which is
hereto attached, came into my hands for service on NOVEMBER 14th
20 08, and that I have made diligent search and inquiry for the aboved named

(~~witness~~/defendant), BUTCH JOHNSON, upon whom to make
legal service of the aforementioned papers. After much search and inquiry,
I have been unable to find said (~~witness~~/defendant) in the State of South
Carolina, upon whom to make service thereof.

Claude O. Gillion III

Claude O. Gillion, III
Gillion's Process Service, Inc.
P.O. Box 25292
Columbia, South Carolina 29224

Sworn to before me this
19th day of NOVEMBER 2008

Loraine P. Renee (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires November 3, 2018

MADE TOTAL OF 5 TRIPS TO 312 OAK BROOK DR.
MADE TOTAL OF 4 TRIPS TO 4949 TWO NOTCH .,
MADE 1 TRIP TO 1410 RED RIDGE TERRACE; AND
MADE 1 TRIP TO 5801 MACKAY ST., RECEIVED
CALL FROM BUTCH JOHNSON'S PHONE STATING
HE WAS NOT HIM, BUT KNEW IT WAS; TRIED TO
SERVE HIM AT TWO NOTCH ADDRESS, BUT HE
DROVE OFF; RED RIDGE & ALSO MACKAY STS.,
NO ONE EVER HEARD OF HIM; AVOIDING SERVICE

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A

AFFIDAVIT OF SERVICE

State of South Carolina

County Of Richland

Common Pleas Court

Case Number: 2008-CP-40-07994

Plaintiff:

Palmetto Citizens Federal Credit Union,

Vs

Defendants:

**Butch Johnson, Alcon Action Agency II, LLC, the
United States of America, by and through its agency,
the Internal Revenue Service, Branch Banking and Trust
Company, South Carolina Federal Credit Union, and
Carolina Trust Federal Credit Union,**

RICHLAND COUNTY
FILED
2009 JAN -9 PM 1:51
JEANETTE W. McBRIDE
C.C.P. & G.S.

Received by Regional Investigations, Inc. to be served on **Butch Johnson, address unknown.** I Gerald Rounbehler, being duly sworn, depose and say that on n/a day of n/a 2008 at n/a a.p.m., executed service by delivering a true copy of the **Civil Action Coversheet, Certificate of Exemption from ADR, Summons, Complaint with Exhibits A, B and C, and Lis Pendens** in accordance with state statutes in the manner marked below:

() **INDIVIDUAL SERVICE:** Served personally to the within-named.

() **SUBSTITUTE SERVICE:** By Delivering to: _____, as _____

A person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

() **OTHER SERVICE:** As described by serving:

(X) NON SERVICE: Due to reasons detailed in Comments below.

() **MILITARY STATES:** Y N If yes, what branch: _____

() **MARITAL STATUS:** If Married, spouse's name: _____

COMMENTS: 11/26/08 approx. 6:41pm- no lights or vehicles at the 2685 Mt. Olive location;
11/28/08 approx. 6:30am & 5:30pm- no lights or vehicles at the 2685 Mt. Olive location;
11/28/08 approx. 4:48pm- Per George F. Livingston, Sr. VP for Primerica, 1207 Lakeside Dr, Ste 100, Conway, SC – has never heard of Alcon Action Agency II, LLC or Butch Johnson.
12/1/08 approx 9:15am & 4:46pm & 6:34pm- no lights or vehicles at the 2685 Mt. Olive location;
12/1/08 approx. 9:45am- Per individuals at Sunbelt Realty, 1207 Lakeside Dr., Ste 101, - Alcon moved from this location 5 years ago;
12/1/08 approx. 9:57am- Per individuals at SC Health Dept., 900 4th St., Conway, never heard of Alcon or Johnson;
12/1/08 approx. 10:20am- Per resident, no Alcon or Johnson at 111 Quail Run, Conway, SC;
12/1/08 affiant submitted a USPS Change of Address Form, "No change of address order on file", see attached;
12/4/08 approx 2:10pm- no lights or vehicles at the 2685 Mt. Olive location;
12/6/08 approx. 4:36pm- no lights or vehicles at the 2685 Mt. Olive location;



2/8/08 affiant submitted a National Resource Information Search for Defendant, Atrenee B. Stringer and received the following results: Confirmed address as of 9/08

Antrenee B. Stringer (Tel. 334-649-2139)
2656 Baldwin Brook Dr.
Montgomery, AL 36116-107

RICHLAND COUNTY
FILED

2009 JAN -9 PM 4:51

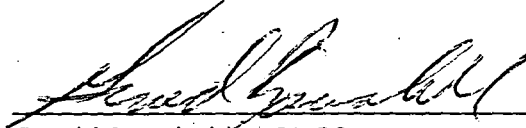
JANETTE W. MCBRIDE
C.C.P. & G.S.

Age Sex Race Height Weight Hair

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service is made.

SWORN TO and Subscribed before me
This 17th day of December, 2008.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/25/2018


Gerald Rounbehler, PI, PS
Regional Investigations, Inc.
PO Box 1089
Little River, SC 29566
843-281-8178

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,
Plaintiff,

vs.

Butch Johnson,
Defendant.

IN THE CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

Case No. 2008-CP-40-619

ORDER OF PUBLICATION

JEANETTE M. MCBRIDE
C.C.P. & G.S.

2009 JAN -9 PM 4:18

RICHLAND COUNTY
FILED

Upon reading and the filing of the Affidavit and Petition of Suzanne Taylor Graham Grigg, Esquire, of the firm of Nexsen Pruet, LLC, attorneys for the Plaintiff, and it appearing that Defendant Butch Johnson ("Defendant Johnson") is a necessary and proper party to this action, the subject of which is the claim and delivery of an automobile; that the Plaintiff is unable with due diligence to make service of the Summons and Complaint in said action upon said Defendant; that Defendant Johnson cannot be found within this state; that the last known address for Defendant Johnson is: 312 Oak Brook Drive, Columbia, South Carolina; and that the Plaintiff has made reasonable efforts to personally serve Defendant Johnson.

IT IS, THEREFORE, ORDERED:

That the service of the Summons and Notice of Filing of Complaint in this action be made on Defendant Johnson, by publication of the same in a newspaper of general circulation in Richland County, South Carolina once a week for three (3) successive weeks, and that on or before the date of the first publication of said Summons and Notice of Filing of Complaint, Plaintiff shall deposit in the mail a copy of the said Summons, together with a copy of the

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Complaint to be carried by certified mail, postage prepaid, addressed to Butch Johnson at his last known address as stated hereinabove.

1/9, 2009

Janette W. Bide
~~Presiding Judge~~
Clerk of Court

Affidavit of
Publication

THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

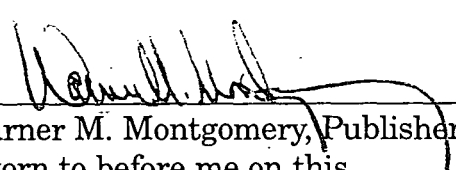
State of South Carolina
County of Richland

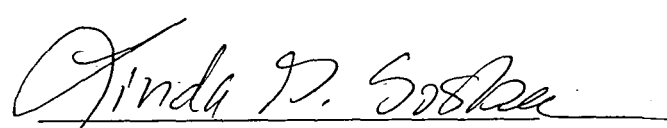
Personally appeared before me,
WARNER M. MONTGOMERY,
PUBLISHER OF THE COLUMBIA STAR
who makes oath that the advertisement

SUMMONS AND NOTICE OF FILING COMPLAINT
Palmetto Citizens Federal Credit Union
vs. Butch Johnson

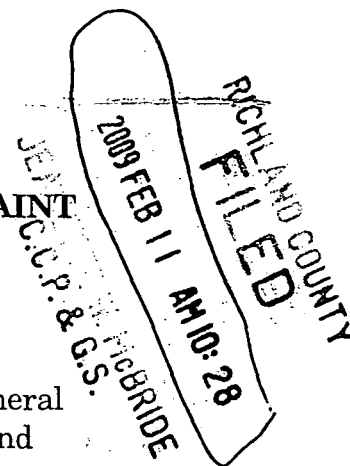
a clipping of which is attached hereto, was printed in
THE COLUMBIA STAR, a weekly newspaper of general
circulation published in the City of Columbia, State and
County aforesaid, in the issues of

January 23, 30, and February 6, 2009


Warner M. Montgomery, Publisher
Sworn to before me on this
6th day of February, 2009.


Linda G. Sosbee, Notary Public
My commission expires January 29, 2011

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SUMMONS AND NOTICE
OF FILING
OF COMPLAINT
STATE OF
SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE CIRCUIT COURT
FIFTH JUDICIAL CIR
CUIT
2008 CP-40-6779
Palmetto Citizens Federal
Credit Union
Plaintiff
vs.
Butch Johnson
Defendant
TO: DEFENDANT BUTCH
JOHNSON
SUMMONS
ARE HEREBY SUM
AND REQUIRED to
of which Complaint in the
upon you a copy of
of your Answer with served
Complaint upon them
attorney, Suzanne Taylor
Graham Grigg, at her office at
1230 Main Street, Suite 700
Columbia, South Carolina
29201, within thirty (30) days
after the service hereof, exclu
sive of the day of such service
and if you fail to answer the
said Complaint within the
time aforesaid judgment by
default will be rendered
against you for the relief
demanded in the Complaint.
NOTICE IS HEREBY GIVEN
that the original Summons
and Complaint in the above
entitled action were filed in
the Office of the Clerk of
Court for Richland County
South Carolina on the 19th
day of September 2008 at
1:40 p.m.
Suzanne Taylor, Graham
Grigg, Esquire
NEXSEN PRUITT, LLC
1230 Main Street, Suite 700
(29201)
PO Drawer 2426
Columbia, SC 29202
Phone: (803) 771-8900
Fax: (803) 253-6277

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

Case No. 2008-CP-40-6779

AFFIDAVIT OF DEFAULT AND NON-
MILITARY SERVICE FOR BUTCH
JOHNSON FOLLOWING SERVICE BY
PUBLICATION

RICHLAND COUNTY
FILED
2009 FEB 26 AM 10:54
JEANETTE M. BRIDE
C.C.F. 803

PERSONALLY APPEARED before me, Suzanne Taylor Graham Grigg, who being duly sworn, deposes and says:

1. She is an attorney with the law firm of Nexsen Pruet, LLC ("Nexsen Pruet"), counsel for the Plaintiff in the above action;

2. The *Summons and Notice of Filing of Complaint* were duly served by publication upon the Defendant Butch Johnson, as evidenced by the Affidavit of Publication filed with the Court on February 11, 2009, and incorporated herein by reference;

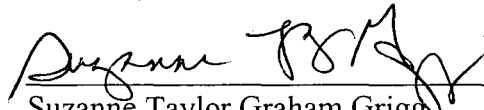
3. Pursuant to the Court's Order filed January 9, 2009, the Summons and Notice of Filing of Complaint were printed in *The Columbia Star*, a newspaper published in and of general circulation in Richland County, South Carolina, for three (3) consecutive weeks, beginning on January 23, 2009, and thereafter, on January 30, 2009 and February 6, 2009, and a copy of the Summons and Complaint was sent via certified mail, postage prepaid to Defendant Butch Johnson at his last know address;

(not so)

4. Upon information and belief, said Defendant is not, and was not at the time of the commencement of this action, a member of the Armed Services of the United States, as is contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended;

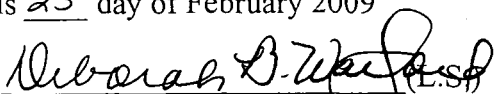
5. More than thirty (30) days have elapsed since the first publication of the foregoing pleadings, and no responsive pleading or motion contemplated under Rule 12, SCRCF, has been served upon Plaintiff's attorney by said Defendant in this matter; and,

6. Said Defendant is now in default.


Suzanne Taylor Graham Grigg
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

Attorney for Plaintiff

SWORN and subscribed to before me
this 25 day of February 2009


Notary Public for South Carolina
My Commission Expires: 10-22-11

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

IN THE CIRCUIT COURT

Civil Action No. 2008-CP-40-6779

**NOTICE OF MOTION AND MOTION
FOR DEFAULT JUDGMENT**

TO: DEFENDANT BUTCH JOHNSON:

YOU WILL PLEASE TAKE NOTICE that Palmetto Citizens Federal Credit Union, the Plaintiff in the above-captioned action, hereby moves the Court, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, for a default judgment against Defendant Butch Johnson (the "Defendant") for the relief prayed for in the Complaint filed with the Court on September 19, 2008. ✓

The grounds for this Motion are as follows:

1. As stated in the Affidavit of Default and Non-Military Service for Butch Johnson Following Service by Publication (the "Affidavit of Default") filed with the Court, the Defendant has failed to respond to the Complaint filed with the Court on September 19, 2008, within thirty (30) days of service of the same.
2. The Defendant is now in default.
3. The Defendant has failed to pay to the Plaintiff the amounts due under the Open-End Disbursement Receipt Plus contract (the "Note"), a copy of which is attached hereto as Exhibit "A", and incorporated herein by reference.
4. The Defendant has failed to surrender the 2002 BMW 745LI automobile, VIN #WBAGN63442DR03665 (the "BMW"), securing the claim of the Plaintiff under the Note.

5. The Defendant owes to the Plaintiff the sum of Twenty-Nine Thousand Fifteen and 82/100 Dollars (\$29,015.82) in principal and accrued interest as of February 16, 2010, representing amounts due under the Note, exclusive of interest accrued after such date and attorneys' fees and expenses. A sworn Statement of Account attesting to the amount of the outstanding indebtedness is attached hereto as Exhibit "B" and incorporated herein by reference.

6. The Note provides that, in the event of default, the Plaintiff is entitled to enforce its security interest in and lien on the BMW pledged therein to secure the indebtedness owed to the Plaintiff under the Note.

7. The Note provides that, in the event of default in payment, the Defendant will pay the Plaintiff its attorneys' fees and expenses incurred in the enforcement of the Note.

8. As evidenced by the Affidavit of Attorneys' Fees and Costs attached hereto and incorporated herein by reference as Exhibit "C", the Plaintiff is entitled to an award of attorneys' fees and costs in this matter in the amount of Three Thousand Four Hundred Sixty-Six and 02/100 Dollars (\$3,466.02).

9. The Note further provides that the Plaintiff is entitled to interest on the indebtedness at the contract rate of 5.95% per annum until the indebtedness is paid in full.

10. On February 27, 2009, the Defendant filed for protection under chapter 13 of the United States Bankruptcy Code. Upon the bankruptcy filing, this action was stayed, pursuant to 11 U.S.C. Section 362 of the Bankruptcy Code. However, the Defendant's bankruptcy case has been dismissed by Order of the Bankruptcy Code filed April 16, 2009, and this action may now proceed. A copy of the Order Dismissing Case With Prejudice is attached hereto as Exhibit "D" and incorporated herein by reference.

11. Based upon the foregoing, the Plaintiff hereby moves the Court:

(a) For entry of a default judgment against the Defendant in the amount of Twenty-Nine Thousand Fifteen and 82/100 Dollars (\$29,015.82), plus accrued interest from February 16, 2010 until entry of judgment, and thereafter, at the contract rate of interest of 5.95% per annum, until the judgment is paid in full;

(b) For entry of an Order awarding attorney's fees and expenses to the Plaintiff in the amount of Three Thousand Four Hundred Sixty-Six and 02/100 Dollars (\$3,466.02);

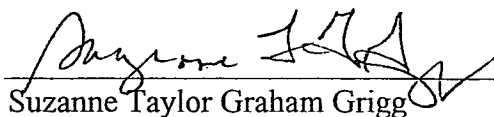
(c) For entry of an Order authorizing the Plaintiff to take possession of the BMW subject to its security interest and to dispose of the BMW, with the proceeds to be applied toward payment of the judgment indebtedness owed by the Defendant to the Plaintiff;

(d) For entry of an Order authorizing the Sheriff of Richland County, South Carolina to recover the BMW subject to the Plaintiff's lien and to place the Plaintiff or its agent in possession of the BMW;

(e) In the event the Court determines that a default damages hearing is required, the Plaintiff moves the Court to convene such a hearing for the assessment of damages; and

(f) For such other and further relief as the Court may deem just and proper in this case.

This motion is based upon the pleadings herein, the applicable law and such other materials as may be served upon the parties.



Suzanne Taylor Graham Grigg
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Phone: 803-771-8900
Fax: 803-253-8277

February 26, 2010

Columbia, South Carolina

Attorneys for the Plaintiff



PALMETTO CITIZENS
P.O. Box 5846
Columbia, SC 29250

LOANLINER

Open-End Disbursement Receipt Plus

BORROWER INFORMATION

BORROWER 1 NAME

BORROWER 2 NAME

JOHNSON, BLITCH

111 QUAIL RUN

CONWAY SC 29128

ACCOUNT NUMBER

77578-L19.1

DATE

08-14-2004

SECURITY OFFERED

THE ADVANCE IS SECURED BY YOUR SHARES, ALL PROPERTY SECURING OTHER PLAN ADVANCES AND LOANS RECEIVED IN THE PAST OR IN THE FUTURE, AND THE FOLLOWING

PROPERTY:

YEAR

I.D. NUMBER

VALUE

KEY NUMBER

BMW 745LI 2002 WBAGN63442DRO3685

PLEDGE OF SHARES
AND/OR DEPOSITS

SAVINGS

ACCOUNT
NUMBER

*77579S1

PLEDGE OF SHARES
AND/OR DEPOSITS

SAVINGS

ACCOUNT
NUMBER

*77579S1

☐ **CONSUMER'S CLAIMS AND DEFENSES NOTICE** — The following paragraph applies to the Advance only if the box is checked.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

SUBSEQUENT ELECTION FOR VOLUNTARY PAYMENT PROTECTION

You can now voluntarily elect to become insured with the coverage(s) shown below. In order for coverage to become effective you must meet all eligibility requirements stated in the Credit Insurance Application/Schedule. A statement of Insurability must be completed if you are adding coverage more than 30 days after the date of your advance. Details of this insurance coverage are included in the Insurance Certificate which you received with your Credit Agreement. Ask us if you need a copy of the Insurance Certificate. You agree to the terms of the insurance election checked below and you authorize us to add the charges for the insurance to your outstanding balance each month. Your payment amount will increase or you will be required to make additional payments. Coverage election applies to the entire balance on this subaccount. Insurance rates are subject to change.

YOU ELECT THE FOLLOWING:

YES NO

MONTHLY LOAN BALANCE

NAME OF INSURER(S)

Single Credit Disability

☒

Joint Credit Disability

☒

Single Credit Life

☒

Joint Credit Life

☒

REPAYMENT TERMS

DAILY PERIODIC RATE	ANNUAL PERCENTAGE RATE	INTEREST RATE IS:	OTHER FEES (Amount and Description)	NEW BALANCE THIS SUBACCOUNT
0.15519%	5.630%			\$59,414.00
AMOUNT ADVANCED	PAYMENT AMOUNT	DATE DUE	PAYMENT FREQUENCY	LINE OF CREDIT LIMIT
\$59,414.00	\$977.68	7/25/2004	Monthly	\$59,414.00
				REMAINING LIMIT
				\$0.00

SIGNATURES

By signing below, or by endorsing the proceeds check for the advance described above, or by having the loan proceeds deposited into your share/share draft account or paid to a third party, you agree:

- (1) that the property described in the Security Offered section above ("Property") is security under the terms of the LOANLINER Credit and Security Agreement (the "Plan") for all amounts you owe under the Plan and that the property description is incorporated into and a part of the Plan;
- (2) that the Property is also security for any other loans, including but not limited to, any credit card loan that you have with the credit union now or in the future;
- (3) that you will make the payments disclosed above in accordance with the terms of the Plan; and
- (4) that if you are now electing credit insurance, you are voluntarily electing the coverage checked in the Subsequent Election for Voluntary Payment Protection section above.

X on CE Agreement
BORROWER 1 SIGNATURE

(SEAL) 8/14/2004

DATE

X

BORROWER 2 SIGNATURE

(SEAL) 8/14/2004

DATE

FOR CREDIT UNION USE ONLY

REQUESTED:

MEMBER PAYS
PREMIUM FOR:

CHECK NUMBER:

BRANCH NUMBER:

DATE

LOAN OFFICER COMMENTS:

PLAN/SUBACCOUNT NO.:

PROCESSED BY:

LOAN OFFICER INITIALS

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

IN THE CIRCUIT COURT

Case No. 2008-CP-40-6779

**AFFIDAVIT OF STATEMENT OF
ACCOUNT**

PERSONALLY APPEARED BEFORE ME, Gabriel McFadden, who after being duly sworn, states that he is the Collections Manager for Palmetto Citizens Federal Credit Union, that he is authorized to make this affidavit, and that the following itemized statement of account against the above Defendant is correct within the Affiant's knowledge as of the date below:

Principal Amount as of February 16, 2010
(Loan No. L19.1)

\$26,254.22

Accrued Interest at the rate of 5.95% per annum
as of July 20, 2009 (per diem of \$0.016301)

\$ 1,991.60

Other

\$ 770.00

TOTAL DEBT AS OF February 16, 2010
(Exclusive of Attorney's Fees & Costs)

\$29,015.82

PALMETTO CITIZENS FEDERAL
CREDIT UNION

Gabriel McFadden

By: Gabriel McFadden

Title: Collections Manager

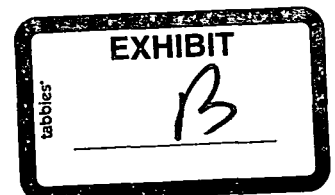
SWORN and subscribed to before me
this 10th day of February, 2010

K. F. [Signature] (L.S.)

Notary Public for South Carolina

My commission expires: 09/27/12

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

IN THE CIRCUIT COURT

Case No. 2008-CP-40-6779

**AFFIDAVIT OF ATTORNEYS' FEES
AND COSTS**

PERSONALLY APPEARED before me Suzanne Taylor Graham Grigg, who first being duly sworn, states as follows:

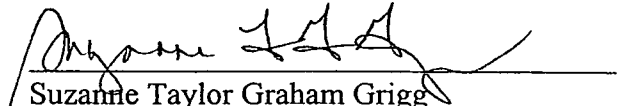
1. She is an attorney with the law firm of Nexsen Pruet, LLC ("Nexsen Pruet"), attorneys for the Plaintiff Palmetto Citizens Federal Credit Union ("PCFCU") in the above entitled action;
2. She has examined the billing records of Nexsen Pruet for this matter;
3. PCFCU has incurred the amount of \$2,548.62 for legal fees incurred to-date for Nexsen Pruet's services, and PCFCU has incurred the amount of \$317.40 for allowed direct out-of-pocket expenses incurred in this matter;
4. She anticipates that Nexsen Pruet will bill PCFCU an additional amount of \$500.00 for its services and an additional \$100.00 for out-of-pocket expenses through the conclusion of this matter;
5. She is informed and believes that Nexsen Pruet is entitled to reasonable attorneys' fees in connection with this matter in the amount of \$3,048.62, and out-of-pocket litigation expenses in the amount of \$417.40 relating to this matter for a combined total amount of \$3,216.02; and

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6. The Open-End Disbursement Receipt Plus Contract (the "Contract") executed by Butch Johnson on June 14, 2004, provides that the maker will pay all costs and expenses incurred by PCFCU in enforcing the Contract, including reasonable attorneys' fees and costs.

FURTHER THE AFFIANT SAYETH NOT.


Suzanne Taylor Graham Grigg
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

Attorneys for Palmetto Citizens Federal Credit
Union

SWORN and subscribed to before me
this 20th day of February, 2010

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 8/18/2013

FILED
5:12:50
at o'clock & min.

APR 16 2009

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (21)

IN RE:

Butch Johnson,

ENTERED

APR 16 2009

K. E. P.

Debtor(s).

C/A No. 09-01455-jw

**ORDER DISMISSING CASE WITH
PREJUDICE**

Chapter 13

This court has previously entered an Order, granting an extension of time within which the debtor may file schedules and statements (and, in a chapter 13 case, the plan). The extended period has now passed without filing of all documents required to be filed. It further appears that this case was filed within one year following the dismissal of debtor's prior Chapter 13 case.

Therefore, pursuant to the terms of the previously entered Order and Local Rule 1017-2, **IT IS**

ORDERED THAT:

- (1) This case is dismissed with prejudice for a period of one year with respect to Chapters 11, 12 and 13;
- (2) The clerk shall close the case;
- (3) Any fees due to the Clerk of Court pursuant to 28 USC §1930 and the appendix thereto, shall be paid within ten (10) days of the entry of this order, unless otherwise ordered by the court.

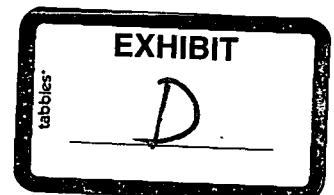

UNITED STATES BANKRUPTCY JUDGE

I SO MOVE:

/s/ William K. Stephenson, Jr.
Chapter 13 Trustee

Columbia, South Carolina
April 16, 2009.

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,

Plaintiff,

vs.

Butch Johnson,

Defendant.

IN THE CIRCUIT COURT

Civil Action No. 2008-CP-40-6779

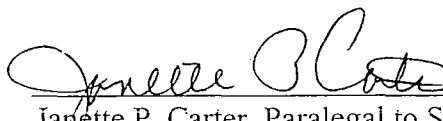
CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **Motion Information Form and Cover Sheet and Notice of Motion and Motion for Default Judgment (with Exhibits A through D)** have been served upon Defendant Butch Johnson by depositing copies of the same, first-class postage prepaid, in the United States Mail, on the 26th day of February 2010, to his last known address as shown below:

Butch Johnson
312 Oak Brook Drive
Columbia, SC 29223

February 26, 2010

Columbia, South Carolina



Janette P. Carter, Paralegal to Suzanne Grigg
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803-771-8900

Attorneys for Plaintiff Comerica Bank

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State of South Carolina

Court of Common Pleas

County of Richland

2008-CP-40-6779

Palmetto Citizens Federal
Credit Union

-VS-

Butch Johnson

:
:
:
:
:
:

TRANSCRIPT OF RECORD

July 26, 2010

Columbia, South Carolina

B E F O R E:

The Honorable J. Michelle Childs, Judge.

A P P E A R A N C E S:

Jennifer Hollingsworth, Esquire
Attorney for the Plaintiff

Butch Johnson, pro se defendant

Daphne D. Helms

Circuit Court Reporter

RECEIVED
MAR 23 2011
SC Court of Appeals

1 **The Court:** Okay. My first case is Palmetto Citizens.
2 Do you expect anybody on the other side?

3 **Ms. Hollingsworth:** Yes, Your Honor.

4 **The Court:** Okay.

5 **Mr. Johnson:** Yes, Your Honor. I'm Butch Johnson.

6 **The Court:** Okay. And you are Mr. Butch Johnson.

7 **Mr. Johnson:** Yes.

8 **The Court:** Okay.

9 **Ms. Hollingsworth:** Your Honor, Jennifer Hollingsworth
10 for Ms. Grigg this morning.

11 **The Court:** Okay. This is civil action number 2008-CP-
12 40-06779, the matter of Palmetto Citizens Federal Credit
13 Union, plaintiff, versus Butch Johnson. Mr. Johnson is
14 appearing pro se. Is that correct? You're representing
15 yourself?

16 **Mr. Johnson:** Yes, Your Honor.

17 **The Court:** Okay. And then with respect to Palmetto
18 Citizens, Jennifer Hollingsworth?

19 **Ms. Hollingsworth:** Hollingsworth, yes, Your Honor.

20 **The Court:** Okay. The Court has this styled as a motion
21 for default judgment. So we'll hear from you, Ms.
22 Hollingsworth.

23 **Ms. Hollingsworth:** Thank you, Your Honor. We're here
24 this morning. This is a claim-and-delivery action that was
25 begun back in September of 2008 related to a B.M.W. vehicle.

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1 Mr. Johnson had taken out a loan with my client, Palmetto,
2 and there was a lien placed on that vehicle, purchase money
3 security interest on that B.M.W. vehicle. Back as of
4 April 24th, 2008, Mr. Johnson had gotten behind and owed
5 \$4,888.30, so---

6 **The Court:** Say that number again.

7 **Ms. Hollingsworth:** \$4,888.30.

8 **The Court:** Okay.

9 **Ms. Hollingsworth:** So that was the payments as of
10 April 24th, 2008, that were due when this action was filed in
11 September of 2008. We were unable to serve Mr. Johnson after
12 approximately three to four weeks by two different process
13 servers, so we obtained an order for publication and we
14 served Mr. Johnson by publication in "The Columbia Star" for
15 three weeks.

16 We subsequently on February of 2009 filed an affidavit
17 for default. Mr. Johnson then provided us with notice of a
18 bankruptcy filing on February 27, 2009. So this matter was
19 stayed briefly while that bankruptcy was going forward.
20 However, that bankruptcy was dismissed as of April 16th,
21 2009. So I believe pursuant to a 180-day rule no claim was
22 filed, so the bankruptcy court dismissed Mr. Johnson's
23 bankruptcy. And subsequently in March -- March 2, 2010, of
24 this year we filed the subject motion for default to which
25 Mr. Johnson did file a reply, and so we're here this morning

1 on that motion.

2 No payments have been made. We've made numerous
3 attempts to try to obtain the vehicle through repossession,
4 but the vehicle has been hidden from us. And so we're here
5 just seeking the judgment in the matter this morning.

6 **The Court:** Okay. All right. Mr. Johnson, do you
7 dispute any of the facts that she's indicated?

8 **Mr. Johnson:** Yes, I do, Your Honor.

9 **The Court:** Okay.

10 **Mr. Johnson:** If it please the Court, that number one---

11 **The Court:** Well, let's start out: Did you purchase a
12 B.M.W. from her client?

13 **Mr. Johnson:** Yeah, there was a vehicle, but I'd like to
14 approach the bench and be willing to show you what actually
15 transpired with it.

16 **The Court:** Okay. You need to show her first.

17 **Mr. Johnson:** Okay.

18 (Mr. Johnson shows a document to Ms. Hollingsworth.)

19 **Mr. Johnson:** That was an open-ended agreement I didn't
20 sign. Well, I had such a good rapport with First---

21 **The Court:** You need to go back to your table.

22 **Mr. Johnson:** I'm sorry.

23 **The Court:** That's okay.

24 **Mr. Johnson:** I had such a good rapport with First
25 Palmetto that I paid off not only a mortgage loan but other

1 vehicles, and over the telephone we worked out this
2 particular transaction. But what I'm here today for namely
3 is, to get directly to the point, they utilized a service of
4 process by publication, and based on my due diligence and the
5 little research I've done on the South Carolina Code of Laws
6 15-9-710 it stated that you had 30 days to reply or answer a
7 default notice if it was published in a newspaper from that
8 last date of publication which the last date of publication
9 -- of course, I can show you that as well which was---

10 **The Court:** Okay. We're talking about two different
11 things. One is procedurally -- I mean, the facts that she's
12 mentioning are that in September 2008 that you purchased or
13 got a loan from Palmetto Citizens Federal Credit Union to
14 purchase a B.M.W. Are you disputing that?

15 **Mr. Johnson:** No. I did purchase the vehicle.

16 **The Court:** Okay. And then she's saying that as of
17 April 24, 2008, that you would have owed \$4,888.30.

18 **Mr. Johnson:** I'm not exactly sure that that's the exact
19 amount because we had what we call a cross collateral, and
20 they would have refused payments because I had a Visa account
21 and I had a mortgage account and I had an automobile account
22 -- automobiles accounts which I paid off several of the
23 automobile loans due to the fact that I had to go out and
24 apply to get another loan from another bank to pay it off
25 because they wouldn't accept the payments because they---

1 **The Court:** Do you have any evidence that you actually
2 sent payments and they were refused?

3 **Mr. Johnson:** Well, I'll put it this way here: No, I
4 don't because I would always take it in person. I was not
5 mailed a receipt, and Mr. Gabriel McFadden got very
6 belligerent with me---

7 **The Court:** Who would not accept payments on a car
8 that---

9 **Mr. Johnson:** Because---

10 **The Court:** ---on a loan?

11 **Mr. Johnson:** Because the federal credit union -- they
12 informed me that it was cross collateral transaction, and
13 they didn't have to accept a payment on a car when my Visa
14 payment was due and my mortgage payment was due.

15 **The Court:** So did they accept the payment to pay for
16 those other cars?

17 **Mr. Johnson:** They wouldn't -- oh, yeah, they accepted a
18 payoff.

19 **The Court:** Right.

20 **Mr. Johnson:** It was a payoff that I tendered to them to
21 pay it off, and based on my---

22 **The Court:** So you're basically saying you had three
23 accounts with them: A car, a MasterCard, and a Visa?

24 **Mr. Johnson:** I had one, two, three -- I had four
25 automobile loans with them---

1 **The Court:** Okay.

2 **Mr. Johnson:** ---a Visa, and a mortgage loan.

3 **The Court:** Okay. So when you brought in money---

4 **Mr. Johnson:** To pay it off---

5 **The Court:** ---they chose which account to apply it to.

6 **Mr. Johnson:** That's exactly right, but what happened
7 is---

8 **The Court:** Okay. Even if they did that, that still
9 made you owe on this B.M.W.

10 **Mr. Johnson:** That's correct. Nonetheless, after I paid
11 off the other three vehicles, they held my titles until such
12 time that I informed them that I was going to the court to
13 get the titles released to the bank which at the time they
14 decided: Look, give us another two or three weeks. Gabriel
15 McFadden informed me that he had to check with his boss and
16 they had to go to Atlanta to deal with whatever they had to
17 deal with. But to make a long story short, they finally
18 accepted the fact that I was due the titles regardless of the
19 cross collateral and they could have transferred that
20 money---

21 **The Court:** Okay. But you agree that you owe money on
22 the B.M.W.

23 **Mr. Johnson:** I do owe money on the B.M.W.

24 **The Court:** Okay. And that this was an action filed to
25 collect on that money.

1 **Mr. Johnson:** I agree with that.

2 **The Court:** Okay. And so she's here trying to get a
3 default judgment saying that you are behind on your payments.
4 Do you dispute that?

5 **Mr. Johnson:** Well, she's here namely -- if you'll look
6 at the pleadings, Your Honor, that I filed a Chapter 13---

7 **The Court:** Right.

8 **Mr. Johnson:** ---less than 30 days from the last
9 publication of "The Star" newspaper. However---

10 **The Court:** Which has since been dismissed. Is that
11 correct?

12 **Mr. Johnson:** Yes, it has been -- it has been dismissed,
13 but based on my findings of the law and also the bankruptcy
14 case that I've presented in my reply---

15 **The Court:** Okay. Let's go back here. She filed a
16 complaint in September 2008 in this courtroom. Have you
17 eventually received a copy of the complaint?

18 **Mr. Johnson:** I received a copy of the complaint---

19 **The Court:** Okay.

20 **Mr. Johnson:** ---at the time.

21 **The Court:** Way back then or at some particular time.

22 **Mr. Johnson:** No. No.

23 **The Court:** When did you receive a copy of the
24 complaint?

25 **Mr. Johnson:** Whenever they went -- we went to the

1 bankruptcy.

2 **The Court:** Okay. So you got a copy of the complaint.

3 **Mr. Johnson:** Yes.

4 **The Court:** Okay. And then once you got a copy of the
5 complaint, did you ever respond to it?

6 **Mr. Johnson:** No. I was in bankruptcy, but the
7 statute---

8 **The Court:** So the answer is no, you didn't respond.

9 **Mr. Johnson:** I didn't respond to it because I was in
10 bankruptcy and I wasn't sure what was going to happen in the
11 bankruptcy case. So what happened is---

12 **The Court:** Okay. That's fine, but then the bankruptcy
13 got dismissed. Correct?

14 **Mr. Johnson:** And then they were supposed to go back and
15 serve me officially again because it's unconstitutional---

16 **The Court:** Based on what? Why were they to serve you
17 again?

18 **Mr. Johnson:** Because, number one, I filed Chapter 13.
19 It was less than 30 days when the last publication was out.

20 **The Court:** Okay. But at some point your bankruptcy was
21 dismissed. That means the bankruptcy court is not holding
22 your bankruptcy. They're not doing anything, so these
23 proceedings don't get stayed any further.

24 **Mr. Johnson:** Well, at least they would have -- they
25 would have served me with the proper notice that they was

1 going to do what they were going to do in regards to -- and
2 they called me constantly after that. I've talked with
3 Gabriel many a times. I've been to their---

4 **The Court:** Okay. So are you suggesting that all she
5 needs to do is serve you and then you'll do what?

6 **Mr. Johnson:** If she served---

7 **The Court:** Because you've already admitted---

8 **Mr. Johnson:** Well, we were negotiating, Attorney Grigg?

9 **Ms. Hollingsworth:** Grigg.

10 **Mr. Johnson:** Grigg. Attorney Grigg. We were
11 negotiating as to how can we work out the payoff on the
12 account.

13 **The Court:** And I'm not disputing that. Right. And you
14 have every -- any time anybody serves you with a lawsuit, you
15 have the ability to try to negotiate whatever.

16 **Mr. Johnson:** Right.

17 **The Court:** Okay. But at some point the negotiations
18 are over and that's not -- that's now where they are
19 proceeding to get the judgment because apparently you all
20 weren't able to resolve it.

21 **Mr. Johnson:** Or maybe I'm not clear on where we are in
22 the fact that when I filed Chapter 13 the only reason I
23 didn't answer -- I replied to everything else.

24 **The Court:** Okay. That's okay. That's okay. She -- I
25 don't believe Ms. Hollingsworth - and you can correct me if

1 I'm wrong - I don't think you're disputing that once he filed
2 bankruptcy that that was going to stay these proceedings.

3 **Ms. Hollingsworth:** It was stayed, Your Honor.

4 **The Court:** Okay. So she's saying that that stayed it
5 which meant that no action---

6 **Ms. Hollingsworth:** No collections.

7 **The Court:** ---no collections -- they weren't doing
8 anything because they had to wait to see what bankruptcy
9 court would do even as applied to them as a creditor. But
10 now, once they dismissed it, bankruptcy court is no longer
11 dealing with your action. So you're back to square one which
12 is them having served your complaint, you having a duty to
13 respond to it or be held in default.

14 **Mr. Johnson:** But I never got the complaint. That's the
15 point I'm making.

16 **The Court:** Well, you told me you had gotten it as a
17 part of the bankruptcy proceedings.

18 **Mr. Johnson:** At the bankruptcy proceedings -- this is
19 what they served on the court in the bankruptcy proceedings.
20 It was -- let me pull that. Bear with me just one moment,
21 Your Honor.

22 **Ms. Hollingsworth:** That's the copy of it right there.

23 **Mr. Johnson:** Huh?

24 **Ms. Hollingsworth:** You have the lawsuit right there.
25 If you go forward---

1 **Mr. Johnson:** I got this out of the clerk's office.

2 **Ms. Hollingsworth:** That's the -- that's the summons and
3 complaint verification.

4 **Mr. Johnson:** I'm talking about the one that was filed
5 with the bankruptcy court. Okay. Here it is right here.
6 This is what they filed in the bankruptcy court. This is the
7 bankruptcy filing and they were---

8 **Ms. Hollingsworth:** That was filed here in Richland
9 County.

10 **Mr. Johnson:** Yeah, I understand, but a copy of this was
11 sent in to the bankruptcy court, this right here.

12 **Ms. Hollingsworth:** That's up to the -- it's up to the
13 court.

14 **The Court:** And what you're handing me---

15 **Mr. Johnson:** And then---

16 **The Court:** Hold on. You're handing me a notice of the
17 bankruptcy filing.

18 **Mr. Johnson:** That's correct and---

19 **The Court:** So basically the Palmetto Citizens filed in
20 circuit court, which is where we are, Richland County, just a
21 notice that you had filed a bankruptcy so that that way this
22 action would be stayed and so the court wouldn't put it on a
23 docket. They wouldn't require you all to appear or do
24 anything, and that's exactly what she agreed to: That once
25 bankruptcy was filed, she stayed this matter. Now that

1 bankruptcy is dismissed, this matter comes back to our docket
2 for us to resolve. So we're not disputing any of that.

3 **Mr. Johnson:** Well---

4 **The Court:** The issue is whether or not you indicated
5 that you did get a copy of the complaint. So now you have to
6 act on the complaint.

7 **Mr. Johnson:** Well, even if I had acted on the
8 complaint, at the time I got this right here, they had
9 already filed in court a motion for a default premature.

10 **The Court:** But the motion for default was March 2nd,
11 2010, but your bankruptcy was dismissed April 16, 2009.

12 **Mr. Johnson:** At that point in time it's my
13 understanding that she's to serve me all over again.

14 **The Court:** Based on what? Based on what?

15 **Mr. Johnson:** I mean, I filed bankruptcy. I stayed the
16 action.

17 **The Court:** I know, but when it was dismissed, that's
18 over. So she gets to now proceed on her action because
19 bankruptcy is not holding your case any more.

20 **Mr. Johnson:** Well, that's -- that's my ignorance of the
21 law and---

22 **The Court:** So you're not disputing you got a copy of
23 the complaint. Is that correct?

24 **Mr. Johnson:** I got a copy of the complaint from the
25 clerk of court, yes.

/01

1 **The Court:** What clerk of court?

2 **Mr. Johnson:** Up here.

3 **The Court:** In Richland County?

4 **Mr. Johnson:** In Richland County, yes.

5 **The Court:** So you got -- how did you get a copy from
6 the clerk?

7 **Mr. Johnson:** I went to the file.

8 **The Court:** Okay.

9 **Mr. Johnson:** Based on -- based on---

10 **The Court:** Okay. But let's -- let's---

11 **Mr. Johnson:** Based on this.

12 **The Court:** Okay. Ms. Hollingsworth, let you go through
13 so that it's clear for the record and these proceedings what
14 you believe is his proper service so that -- he's challenging
15 in his own lay terms whether or not he was properly served.

16 **Ms. Hollingsworth:** Correct, Your Honor.

17 **The Court:** So make that clear for the Court.

18 **Ms. Hollingsworth:** I understand, Your Honor. We
19 attempted multiple personal service attempts. Attached to
20 our affidavit of default are affidavits of two different
21 process servers where we attempted multiple times to serve
22 Mr. Johnson personally from November 14th, 2008, through
23 November 19th, 2008, by Jillian's process server and again
24 from November 26th through December 6, 2008, by Reasonable
25 Investigation, Incorporated.

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1 After those multiple failed attempts which included
2 avoidance of service as shown by Claude Jillian's affidavit
3 where there were personal contacts made with Mr. Johnson and
4 he avoided service, we moved for an order of publication
5 which we received. Mr. Johnson was served by publication in
6 "The Columbia Star" for three weeks on January 23rd, 2009,
7 January 30th, 2009, and February 6th, 2009. So---

8 Mr. Johnson: Well---

9 Ms. Hollingsworth: ---he was served by publication---

10 The Court: You'll get a chance to -- let her finish.

11 Ms. Hollingsworth: ---following those three weeks.

12 When we moved for -- when we moved for the affidavit of
13 default on February 26th, 2009, Mr. Johnson immediately filed
14 bankruptcy proceedings. What I'd say for the clarification
15 of the Court: At the same time that this claim-and-delivery
16 action has been going on, there's been a foreclosure action
17 going on. As Mr. Johnson stated to the Court, he has
18 multiple different loan accounts with the credit union. One
19 included a home, and that foreclosure action went on in this
20 court for this entire time period.

21 Mr. Johnson was -- we attempted service of both of those
22 complaints against Mr. Johnson on those dates that I gave
23 you, and on March 6th, 2009, Mr. Johnson did answer and
24 counterclaim the foreclosure proceeding. He just did not
25 answer the claim-and-delivery action. The house has since

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1 been foreclosed on. I believe it was damaged by fire. That
2 action is done. The claim-and-delivery action has not been
3 resolved. We haven't been able to obtain the B.M.W. So
4 that's why more than a year after the bankruptcy is dismissed
5 and nothing has happened in the case in terms of resolving it
6 we've moved for default.

7 **The Court:** Okay. But obviously through Mr. Johnson's
8 own statements he's been in touch with Suzanne Griggs.

9 **Ms. Hollingsworth:** He has, Your Honor.

10 **The Court:** Is that correct?

11 **Mr. Johnson:** Yes. Also, Your Honor---

12 **The Court:** So you have notice that you---

13 **Ms. Hollingsworth:** Actual notice.

14 **The Court:** ---there's a complaint.

15 **Mr. Johnson:** Yes, Your Honor. Also, I disagree with
16 her, and Jillian -- I've never had contact with this process
17 server. As a matter of fact, if you'll notice on here he
18 says that he filed an investigation that was 312 Mylick
19 (phonetic) Road, Columbia, South Carolina. There's no such
20 address as that, so obviously he was going to the wrong
21 address. Here it is here.

22 **Ms. Hollingsworth:** There are multiple addresses on
23 that---

24 **Mr. Johnson:** Obviously those addresses were picked up
25 through the City of Columbia water department---

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1 **The Court:** Okay.

2 **Mr. Johnson:** ---which I say that it is a violation of
3 my constitutional right for him to go through the City of
4 Columbia water department to get these multiple addresses
5 when---

6 **The Court:** Did you not file addresses---

7 **Mr. Johnson:** Here we go right here.

8 **The Court:** Okay. Here's -- here's the bottom line:
9 You are not disputing that you received a copy of this
10 complaint. You're on notice that this action was pending.

11 **Mr. Johnson:** After the fact.

12 **The Court:** After the bankruptcy.

13 **Mr. Johnson:** After they've already filed the affidavit
14 for default.

15 **The Court:** You're trying to say you didn't know
16 anything about this action until March 2010?

17 **Mr. Johnson:** No, it's not that I didn't know anything
18 about it. I didn't have a copy of the documents that they
19 had filed with the court. I went up there and later after
20 talking with Gabriel---

21 **The Court:** But you understand that they tried to serve
22 you by process server, were unsuccessful, so then they served
23 you by order of publication which is proper because they got
24 a court order saying that they could do that, and by
25 publication they publicize it in "The Star Reporter" three

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1 weeks in a row, and so that's considered notice.

2 **Mr. Johnson:** I understand. Also, if it please the
3 Court, if you'd look at this letter here, even the attorney
4 for Nix (phonetic) wrote to the clerk of court because she
5 was getting ready to dismiss the action. That's how confused
6 she was.

7 **Ms. Hollingsworth:** That's not what that says, Your
8 Honor.

9 **Mr. Johnson:** And she wanted to make certain that it
10 stayed on the docket. I never got any formal communications
11 of that information.

12 **The Court:** Well, I don't interpret the letter that she
13 said -- in terms of keeping the case open, she's basically
14 saying she's going to file an affidavit of default, and so,
15 therefore, the case would remain on the docket because before
16 the case, she filed a notice of bankruptcy to stay it so that
17 nobody would be harassing you or requiring you to be here
18 until your bankruptcy proceedings were resolved.

19 But I will make the finding that you have been duly
20 notified of the proceedings in terms of the complaint here.
21 There was an attempt at personal service, but then finally
22 they, meaning the plaintiff, had gone through order of
23 publication, that they have appropriately submitted their
24 default judgment papers including the open-end disbursement
25 receipt plus form, the certificate of title, the affidavit of

1 the statement of the account, and the affidavit of attorneys
2 costs and fees, that they've also indicated that the
3 bankruptcy proceeding through the order appropriately filed
4 with their documents as exhibit D. -- there was an order
5 dismissing that case with prejudice. The bankruptcy
6 proceedings were filed in February 2009 but dismissed in
7 April 2009.

8 This affidavit of default is March of 2010 that you have
9 indicated on the record that you've had discussions with Ms.
10 Griggs trying to negotiate this which was very appropriate,
11 that once somebody has a complaint filed against them that
12 they can try and negotiate any type of settlement or
13 resolution of any form with that particular party or their
14 attorney. Do you have anything else to add, sir?

15 **Mr. Johnson:** I add lastly that my position is that at
16 the time that I was served again, on her complaint and on her
17 motion and notice of motion the 30 days started overzealously
18 with her and she filed a default -- motion for default ever
19 since February the 26th which was---

20 **The Court:** Of what year?

21 **Mr. Johnson:** Of 2009. But she was using the first date
22 of service which was from the 23rd of January through
23 February the 26th and using four days of enlargement for me
24 to answer, and then on the 27th that's when I filed for the
25 bankruptcy. It was my understanding that she had to serve

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1 me---

2 **The Court:** Okay. Well, let's -- let's start before you
3 even filed bankruptcy. This action was filed in September
4 2008.

5 **Mr. Johnson:** Which I---

6 **The Court:** Is that correct, Ms. Hollingsworth?

7 **Mr. Johnson:** ---had no notice.

8 **Ms. Hollingsworth:** That is correct, Your Honor.

9 **The Court:** But they tried to serve you by personal
10 service. That's why you don't have notice because they could
11 not find you---

12 **Mr. Johnson:** But I---

13 **The Court:** ---but then the -- hold on. And then the
14 order of publication -- remind the Court of those dates.

15 **Ms. Hollingsworth:** January 9th of 2009 -- we petitioned
16 for it on January 9th of 2009, received an order from the
17 clerk allowing publication. Publication commenced
18 January 23rd, 2009.

19 **The Court:** Okay. So publication was in 2009, January,
20 before you even filed for bankruptcy. So you would have been
21 placed on notice of the action then. So---

22 **Mr. Johnson:** But I didn't get notice.

23 **The Court:** ---that's prior to bankruptcy. Then the
24 bankruptcy was stayed. Well -- but, well, when they cannot
25 get you by personal service, they are entitled to seek an

1 order from the Court to serve you by publication which means
2 that you would happen to be reading legitimate newspapers
3 that people might read and then that would put you on notice
4 if they can't personally find you.

5 And so she has appropriately served you way before you
6 actually filed bankruptcy. Then the bankruptcy was stayed,
7 this action, and then it was dismissed. So that brings this
8 action forward. So technically she's able to go back to the
9 January 2009 date in terms of when you were served. When you
10 didn't appropriately respond within 30 days, then you're held
11 in default at that time.

12 **Mr. Johnson:** Well, I still say, Your Honor, that
13 they're using the date of first publication to move zealously
14 to get a default judgment---

15 **The Court:** The default is not filed until March 2010,
16 but they did their publication in January 2009.

17 **Mr. Johnson:** Well, hold it a second. Let me -- let me
18 look at this right here. It's an affidavit of default that
19 was February the -- February the 26th. The affidavit of
20 default and non-military service that Mr. Johnson -- this was
21 February the 26th of 2009. That's when this was filed, and
22 I've got a copy of it right here.

23 **The Court:** I've got it as well, and that's as a result
24 of the failure for you to respond to their publications that
25 began in January of 2009.

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1 **Mr. Johnson:** And they filed on the 26th, and in essence
2 I'm saying that it was unconstitutional for them to
3 accelerate for filing this right here on February 26th when
4 it should have been from February the 23rd which was the last
5 date of publication for the 30 days.

6 **The Court:** The last date of publication was
7 February 6, 2009.

8 **Mr. Johnson:** February the 6th. I'm sorry. February
9 the 6th, 2009, and they overzealously ran to the---

10 **The Court:** Even if they had filed their affidavit of
11 default overzealously, in your words, you still are in
12 default from the February 6, 2009, date because no court had
13 any proceeding that was prejudicial to you.

14 **Mr. Johnson:** Well, it's my understanding that I
15 wouldn't have been in default until March the 6th of 2009, 30
16 days after---

17 **The Court:** Well, and that -- and you still would be in
18 default at that date and---

19 **Ms. Hollingsworth:** I understand what he's saying, Your
20 Honor, but it doesn't -- nothing has happened in the case
21 because we've been attempting to repossess. There's a
22 foreclosure action. These parties -- a lot has been going
23 on, but they just have not---

24 **Mr. Johnson:** Well---

25 **The Court:** Okay. Okay. Here is the Court's finding:

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1 I'm holding you in default. I'm going to ask Ms.
2 Hollingsworth to do the order. I will note that he has an
3 issue with respect to the February 6, 2009, date. So he is
4 not technically in default until 30 days after that last
5 order of publication. Because the credit union sought an
6 order of publication for those three weeks, then technically
7 let him have received---

8 **Ms. Hollingsworth:** Yes, Your Honor.

9 **The Court:** ---notice of them and we'll hold in
10 default---

11 **Ms. Hollingsworth:** Thirty days from the third week's
12 date of publication.

13 **The Court:** Right. Right. Okay.

14 **Mr. Johnson:** I just want to put notice on the Court
15 that I'll appeal it.

16 **The Court:** That's okay. I'm fine. Never offended by
17 that. That's your right.

18 **Ms. Hollingsworth:** Thank you, Your Honor. I appreciate
19 your time this morning.

20 **The Court:** Okay.

21 **Mr. Johnson:** Thank you, Your Honor.

22 **The Court:** Okay. Thank you.

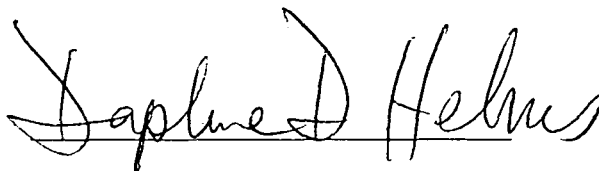
23 (Whereupon, the proceedings were concluded. There were
24 no exhibits introduced.)
25

///

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 26th of July, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 9, 2011

A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter

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BOOK SH-AGE 475

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Palmetto Citizens Federal Credit Union,
Plaintiff,

vs.

Butch Johnson,

Defendant.

Case No. 2008-CP-40-6779

**ORDER GRANTING DEFAULT
JUDGMENT AND ORDER OF
POSSESSION**

JEANETTE W. McBRIDE
J.P. & G.S.

2010 AUG 16 AM 9:23

RICHLAND COUNTY
FILED

This matter was before the Court on Plaintiff Palmetto Citizens Federal Credit Union's ("Palmetto Citizens FCU") Motion for Default Judgment filed on March 2, 2010. Present and appearing before the Court were counsel for the Plaintiff, Jennifer J. Hollingsworth, Esquire, and the Defendant, Butch Johnson, appearing *pro se*. The Defendant filed a Reply to the Motion for Default on March 1, 2010.

Having reviewed the file and hearing the arguments of the parties on July 26, 2010, I make the following findings of fact and conclusions of law:

1. The matter was commenced by a Summons and Complaint filed September 19, 2008, seeking a judgment against the Defendant and seeking possession of Palmetto Citizens FCU's collateral (described below). The Plaintiff attempted to personally serve the Defendant with the lawsuit through two different process servers from November 14, 2008 through December 6, 2008, as evidenced by the Affidavits of Non-Service filed with the Court on January 9, 2009.

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#1/2/09

2. By Order of Publication dated January 9, 2009, the Defendant was served by publication for three consecutive weeks commencing on January 23, 2009 through February 6, 2009.

3. This matter was temporarily stayed from February 27, 2009, as a result of the Defendant's filing of a Chapter 13 bankruptcy, which was dismissed with prejudice by Order of the Bankruptcy Court dated April 16, 2009.

4. The Defendant stated on the record that he had received copies of the pleadings and further stated that he had attempted over a period of time to negotiate a resolution of the lawsuit with counsel for Palmetto Citizens FCU. I find that the Defendant has been properly served with the Summons and Complaint pursuant to publication in The Columbia Star of these proceedings.

5. It appears to the Court that the Defendant has failed to file an answer or otherwise respond to the Complaint.

6. It appears to the Court from the Complaint and the Exhibits thereto that the outstanding amount due and owing to Palmetto Citizens FCU by the Defendant as of February 16, 2010, is Twenty-Nine Thousand Fifteen and 82/100 Dollars (\$29,015.82), and that Palmetto Citizens FCU is entitled to judgment in its favor against the Defendant in the amount of \$29,015.82, plus interest that continues to accrue.

7. It further appears to the Court from the Complaint and the Exhibits thereto that Palmetto Citizens FCU is entitled to reasonable attorneys' fees and expenses incurred in connection with this matter, and that attorneys' fees and expenses totaling \$3,466.02, as set forth in the Affidavit of Attorneys' Fees and Expenses filed by Palmetto Citizens FCU's counsel are

reasonable, and that Palmetto Citizens FCU is entitled to an award of attorneys' fees and expenses in that amount.

8. It further appears to the Court from the Complaint and the Exhibits thereto that Palmetto Citizens FCU is entitled to interest, which continues to accrue on the amount due at a rate of 5.95% per annum from February 26, 2010, until the judgment is paid in full.

9. It further appears to the Court that the Defendant has failed to surrender the collateral, specifically a 2002 BMW (the "BMW"), 745LI automobile, VIN #WBAGN63442DR03665 to Palmetto Citizens FCU.

10. It further appears to the Court that Palmetto Citizens FCU is entitled to enforce its security interest in and lien on the BMW, and that Palmetto Citizens FCU is entitled to possession of the BMW.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant is in default in this matter, and Palmetto Citizens FCU is entitled to a judgment against the Defendant for the outstanding indebtedness plus attorneys' fees and costs in the combined sum of Thirty-Two Thousand Four Hundred Eighty-One and 84/100 Dollars (\$32,481.84);

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Palmetto Citizens FCU is entitled to possession of the BMW and to dispose of the BMW, with the proceeds being applied toward payment of the judgment indebtedness owed by the Defendant to Palmetto Citizens FCU;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Richland County Sheriff, or his agent, shall recover the BMW and place it with Palmetto Citizens FCU or its agent;

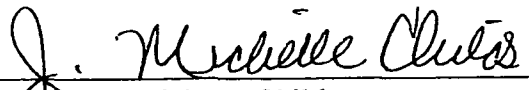
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall

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not destroy, damage, convey, dispose of or use so as to impair the value of the BMW; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the interest shall accrue on this judgment at the contract rate of 5.95% per annum, until the judgment is paid in full.

AND IT IS SO ORDERED.



The Honorable J. Michelle Childs
Presiding Judge
Fifth Judicial Circuit

August 12th, 2010.
Columbia, South Carolina.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Circuit Court of Richland County, South Carolina

J. Michelle Childs, Circuit Court Judge

Case No. 2008-CP-40-6779

Palmetto Citizens Federal Credit Union,.....Respondent,

v.

Butch Johnson,.....Appellant,

CERTIFICATE OF COMPLIANCE

I, Butch Johnson, Appellant hereby certify that the Amended Record on Appeal contains all of the material proposed to be included by any of the parties and not any other material.

AMENDED RECORD ON APPEAL



Butch Johnson, Pro Se for Appellant

312 Oak Brook Drive

Columbia, South Carolina 29223

Phone: 803-665-6807

November 15, 2011
Columbia, South Carolina

RECEIVED

NOV 16 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from the Circuit Court of Richland County, South Carolina

J. Michelle Childs, Circuit Court Judge

Case No. 2008-CP-40-6779

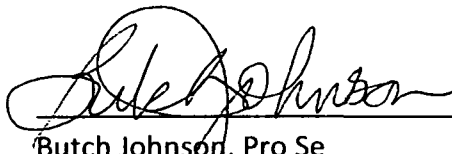
Palmetto Citizens Federal Credit Union,.....Respondent,

v.

Butch Johnson,.....Appellant,

PROOF OF SERVICE

I, Butch Johnson, hereby certify that he has served a copy of the Amended Record on Appeal by depositing a copy of it in the United States Mail, First-Class Postage prepaid, on November 16, 2011, addressed as following to: Suzanne Taylor Graham Grigg and Jennifer J Hollingsworth; Nexsen Pruet, LLC 1230 Main St., Ste 700 (29201) P. O. Box 2426, Columbia, SC 29202.



Butch Johnson, Pro Se
312 Oak Brook Drive
Columbia, South Carolina 29223
Phone: 803-665-6807

November 16, 2011
Columbia, South Carolina

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NOV 16 2011
SC Court of Appeals