

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 27 2014

SC Court of Appeals

13180

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2013-CP-40-6571

Ashely S. Griffith, Appellant,

v.

Pathology Service Associates LLC, Respondent.

**MOTION TO DISMISS THE APPEAL
FOR LACK OF JURISDICTION**

Pursuant to SCACR 240, Respondent moves the Court for an order dismissing the appeal for lack of jurisdiction.

The appeal is interlocutory. The circuit court has not entered any written order, form or otherwise, from which an appeal may be taken. On October 8, 2014, the circuit court held a hearing on Respondent's motions to be relieved from default judgment in *Ashely S. Griffith v. Pathology Service Associates, LLC*, 2013-CP-40-6571 ("Griffith I") and from entry of default in a second matter, *Ashely S. Griffith v. Pathology Service Associates, LLC* 2014-CP-40-4165 ("Griffith II").¹

¹ Appellant has improperly captioned the appeal and filed a consolidated notice of appeal for cases that are not, and never have been, consolidated at the circuit court. In *Griffith I*, an "Amended Complaint" (the propriety of this pleading has been challenged before the circuit court), identified the defendant as "Pathology

At the hearing, Appellant and Respondent raised arguments and objections. The court took the matter under advisement.

On October 9, the circuit court notified the parties that it was granting the motions and asked Respondent's counsel to prepare a proposed order by October 24, 2014. No written order has been entered by the circuit court to date.

As stated by this Court:

An order is not final until it is written and entered by the clerk of court. Until an order is written and entered by the clerk of court, the judge retains discretion to change his mind and amend his ruling accordingly. In *Bayne v. Bass*, 302 S.C. 208, 394 S.E.2d 726 (Ct.App.1990), this court stated as follows:

Until the paper has been delivered by the judge to the clerk of court, to be filed by him as an order in the case, it is subject to the control of the judge, and may by him be withdrawn at any time before such delivery.... 'A judgment is the final determination of the rights of the parties in an action. While the written instrument purporting to be the judgment in a cause remains in the possession of the judge

Services Associates LLC" and expressly identified it as a "South Carolina limited liability company with a principal place of business in Florence County, South Carolina." ("Amended Complaint" ¶ 2, Exhibit 1.) In *Griffith II* the caption only lists "Pathology Services Associates LLC" as a defendant and states that it is "the same Defendant against whom judgment was granted in [*Griffin I*]." (Compl. ¶ 6, Exhibit 2.) Appellant, without filing any motion—or otherwise seeking leave of court—simply started adding "PST Services, Inc." and the designations "n/k/a" or "f/k/a" to the captions of the pleadings in the cases after Respondent raised the issue of whether Appellant had sued a non-existent entity, an issue that was also raised to the circuit court during the hearing on the pending motions. PST Services, Inc., however, is a Georgia corporation. (*See* Sec. of State, Exhibit 3.) Except for Appellant's recent unauthorized changes to the captions, the pleadings in both cases are devoid of any reference to PST Services, Inc. or any allegations of corporate affiliation, name changes, or other facts pertaining to PST Services, Inc. None of this information is properly included in the appeal caption, nor is the caption properly styled as if there are two named defendants and only one is responding.

who is to pronounce it, it is of no effect, and like a deed not delivered. * * * ' Even if as contended by defendant the trial Judge granted an oral divorce to plaintiff such pronouncement **is not a final ruling on the merits nor is it binding on the parties until it has been reduced to writing, signed by the Judge and delivered for recordation.** The Decree must be in writing and until such time the Judge may modify, amend or rescind such an oral Order.

Bowman v. Richland Mem. Hosp., 335 S.C. 88, 91-92, 515 S.E.2d 259, 260-61 (Ct. App. 1999) (citations omitted) (emphasis added). When, as here, no written order has been entered, all that exists is an interlocutory, unappealable oral pronouncement over which this Court has no jurisdiction pursuant to S.C. Code Ann. § 14-3-330.²

Based on the above, Respondent requests that the appeal be dismissed.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
C. Mitchell Brown
E-Mail: mitch.brown@nelsonmullins.com
William C. Wood, Jr.
E-Mail: bill.wood@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

October 27, 2014

Attorneys for Pathology Service Associates LLC

² Even if there were a written, entered order from which an appeal could properly be taken that was consistent with the oral pronouncement of the trial court, it is still questionable whether even that written order would be appealable, as orders granting or denying relief under Rule 55 SCRPC or granting a motion to set aside a default judgment under Rule 60 SCRPC are not immediately appealable. See *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (Rule 55); *Pioneer Assocs., Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 348, 387 S.E.2d 711, 712 (Ct. App. 1989) (Rule 60).

Exhibit 1

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Ashely S. Griffith,
Plaintiff,

Civil Action No. 2013-CP-40-6571

v.

**AMENDED COMPLAINT
(Jury Trial Demanded)**

Pathology Service Associates, LLC,
Defendant.

2014 APR -9 PM 12:37
JEANETTE W. HARRIS
C.C.P. & T.S.
FILED
RICHLAND COUNTY

Plaintiff, complaining of the Defendant, would respectfully show into the Court
the following:^{1,2,3,4}

PARTIES, VENUE, AND JURISDICTION

1. Plaintiff Ashely S. Griffith is a resident of South Carolina.
2. Defendant Pathology Service Associates, LLC is South Carolina limited liability company with a principal place of business in Florence County, South Carolina.
3. The most substantial part of the acts and omissions leading to this action occurred in Richland County, South Carolina.
4. The Court of Common Pleas has jurisdiction over this action pursuant to Titles 14 and 15 of the South Carolina Code of Laws.

¹ Any and all inconsistent material is pled in the alternative. Such inconsistent material may—or may not—be specifically designated as such.

² Allegations appearing in the Parties, Venue, and Jurisdiction and Factual Allegations sections are incorporated into each cause of action. To the extent material appearing in one cause of action is applicable to another cause of action and not inconsistent with the other cause of action, the material is to be deemed incorporated into the other cause of action.

³ To the extent material appearing herein is inconsistent with existing law, the Plaintiff respectfully requests to argue in good faith for a change in the law.

⁴ All dates are pled as “on or about” and all times are pled as “at or about.” Locations given are approximate.

5. Venue is proper in Richland County under Title 15, Chapter 7 of the South Carolina Code of Laws under the facts of the case.

FACTUAL ALLEGATIONS

6. Defendant placed negative credit information in Plaintiff's credit file.

7. The negative credit information consisted of a \$55 charge and a \$43 charge that Defendant claimed it had tried to collect from Plaintiff but was unable to collect.

8. Plaintiff never had any notice that she owed Defendant \$98. She never authorized any services to be performed by Defendant. Plaintiff understands the services may have been contracted for by a medical professional for whom she was a patient, but Plaintiff never received any invoices or other notices that she owed Defendant any funds whatsoever.

9. Plaintiff has no relationship whatsoever with Defendant and never received any notice of these charges. Defendant wholly failed to contact Plaintiff about the matter.

10. Plaintiff aggressively protects her credit and if she had known Defendant believed she owed Defendant \$98, Plaintiff would have made the payments upon demand and worked to resolve the payment matter at a later date simply to avoid negative credit reporting.

11. Plaintiff first learned about this matter in early 2013 in connection with Plaintiff's attempts to purchase a parcel of property.

12. The wrongful negative credit information caused severe problems and substantial delays with regard to Plaintiff's purchase of that parcel of property and caused other severe problems with regard to Plaintiff's credit.

13. Plaintiff suffered special damages in connection with the land transaction in the

amount of \$245,000 with adjustments for interest plus other expenses associated with the interference with the transaction caused by the negative credit information.

14. Plaintiff suffered other substantial damages in connection with credit problems arising out of the wrongful negative credit information beyond the property transaction.

15. As soon as Plaintiff discovered the errors and communicated the errors to Defendant, Defendant did correct the mistakes on Plaintiff's credit report. However, it was too late by that point in time to avoid the damages that then occurred.

16. Defendant's conduct was intentional, reckless, grossly negligent, or negligent and is obviously capable of repetition.

17. Defendant's conduct constituted publication of false and defamatory information against Plaintiff that was not privileged and which caused serious damage to Plaintiff.

FOR A FIRST CAUSE OF ACTION
DEFAMATION

18. The above allegations meet every element of defamation, and Plaintiff seeks all recoveries available under law associated with this cause of action.

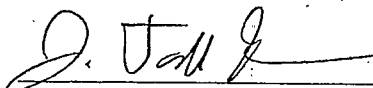
FOR A SECOND CAUSE OF ACTION
UNFAIR TRADE PRACTICES

19. The above allegations meet every element of a claim under the South Carolina Unfair Trade Practice Act, and Plaintiff seeks all recoveries available under law associated with this cause of action.

PRAYER FOR RELIEF

Wherefore, having fully pled the causes of action within the Complaint, the Plaintiff demands a jury trial on all issues triable by jury and prays for a judgment against the Defendant for actual damages including consequential damages, treble damages, punitive damages, attorney's fees, prejudgment interest, the costs of this action, and such other and further relief as the Court may properly order.

Respectfully submitted,



J. TODD KINCANNON
THE KINCANNON FIRM
P.O. Box 7901
Columbia, South Carolina 29202
Phone: 877.992.6878
Fax: 888.704.2010
Email: Todd@TheKincannonFirm.com
Attorney for Plaintiff

April 8, 2014

Exhibit 2

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Ashely S. Griffith,

Plaintiff,

v.

Pathology Service Associates, LLC,

Defendant.

Civil Action No. _____

**COMPLAINT
(Jury Trial Demanded)**

RICHLAND COUNTY
FILED
2014 JUN 30 PM 3:42
JEANNETTE W. MCBRIDE
CLERK & G.S.

STATEMENT OF THE CASE

1. This is the second lawsuit between these parties. In Griffith v. Pathology Service Associates, LLC, No. 2013-CP-40-6571, Plaintiff obtained a valid, final judgment against Defendant for unfair trade practices. Yet this controversy continues because Defendant, despite being solvent, refuses to pay or even communicate with Plaintiff about the matter.
2. While most judgment creditors use writs of execution to enforce judgments, the common law has long recognized an independent action for failure to pay a judgment. E.g., Koerber v. Middlesex College, 383 A.2d 1054 (1978) (citing numerous other cases).
3. All evidence available to Plaintiff indicates that Defendant's failure to pay is a willful continuation of the unfair trade practices that led to the judgment in the first place. Accordingly, Defendant's conduct is not just actionable under the common law. It is also actionable as a new and independent unfair trade practices claim.
4. This is not a surprising result. Disreputable businesses frequently engage in improper conduct to frustrate judgment creditors. But whatever the rule for other types of judgments, there can be no doubt that the willful failure to pay an *unfair trade practices judgment* will almost always be an actionable unfair trade practice in its own right.

PARTIES, VENUE, AND JURISDICTION

5. Plaintiff is a resident of South Carolina and the same Plaintiff for whom judgment was granted in Griffith v. Pathology Service Associates, LLC, No. 2013-CP-40-6571.
6. Defendant is a business and the same Defendant against whom judgment was granted in Griffith v. Pathology Service Associates, LLC, No. 2013-CP-40-6571.
7. Venue and jurisdiction are proper in this Court under South Carolina law.

FACTS

8. The Statement of the Case contains all facts. Plaintiff craves reference to the judgment on file with the Richland County Clerk of Court which is incorporated herein.

FOR THE FIRST CAUSE OF ACTION ACTION ON A JUDGMENT

9. The above allegations meet every element of a claim under South Carolina common law arising out of nonpayment of a judgment, and Plaintiff seeks all remedies available under this cause of action.
10. Defendant is a sophisticated, highly solvent judgment debtor who could easily pay or make reasonable arrangements to pay this judgment without hardship but willfully and intentionally refuses to do so.
11. On these facts, Plaintiff submits that the common law allows the recovery of the sum-certain amount of the judgment plus post-judgment interest, consequential damages arising out of lost investment opportunities and other lost financial opportunities associated with the lack of access to the judgment proceeds, punitive damages, and perhaps reasonable attorneys fees in addition to the sum-certain amount of the judgment plus post-judgment interest and costs. Plaintiff seeks all such remedies and any others available under South Carolina law.

FOR A SECOND CAUSE OF ACTION
UNFAIR TRADE PRACTICES

12. The above allegations meet every element of a claim under the South Carolina Unfair Trade Practices Act, and Plaintiff seeks all recoveries available under this cause of action.

13. Defendant is a sophisticated, highly solvent judgment debtor who could easily pay or make reasonable arrangements to pay this judgment without hardship but willfully and intentionally refuses to do so.

14. The original judgment was for unfair trade practices. On these facts, the willful failure to pay the judgment is a clear continuation of the pattern of unfair trade practices that led to the original judgment in the first place.

15. Defendant's willful, unjustified frustration of Plaintiff's efforts to obtain satisfaction of a valid judgment against Defendant for unfair trade practices affects the public interest because it is clearly subject to repetition and, if the maneuver is successful, will cause other parties to disregard South Carolina's laws against unfair trade practices and the rule of law in general.

16. Defendant's conduct is far different from that of a non-business judgment debtor or even a business judgment debtor that was insolvent. This is because Defendant is using the judgment proceeds to advance Defendant's business interests, the same business interests which were advanced by the unfair trade practices in the first place. This is wholly unfair, as Plaintiff is entitled to those judgment proceeds for use in her business interests, and that is exactly how Plaintiff would use them. And Defendant is not entitled to use judgment proceeds that should be paid to Plaintiff for unfair trade practices to advance the very business that engaged in unfair trade practices in the first place.

17. Defendant's willful failure to pay therefore gives rise to a claim for unfair trade practices allowing the recovery of the sum-certain amount of the judgment plus post-judgment interest, consequential damages arising out of lost investment opportunities and other lost financial opportunities associated with the lack of access to the judgment proceeds, treble damages of the foregoing figures, and, because Defendant's conduct is willful and intentional, reasonable attorneys fees, and the costs of the litigation. Plaintiff seeks all such remedies and any others available under South Carolina law.

ATTORNEYS FEE MATTERS

18. Defendant is already on notice of Plaintiff's fee agreement with her counsel in this matter, a standard one-third contingency fee plus costs. Defendant waived any right to object to the reasonableness of this fee agreement in Griffith v. Pathology Service Associates, LLC, No. 2013-CP-40-6571, proved by affidavit in that litigation that is incorporated herein by reference. Defendant is now barred by res judicata and/or collateral estoppel from denying the reasonableness of that fee at this point.

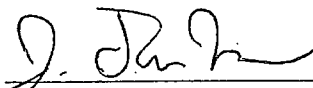
19. Plaintiff hereby puts Defendant on notice of the following: Plaintiff takes the position that the notice provisions of Rule 55(b)(3), SCRCF have already been complied with in this matter and that Defendant is not entitled to any further notice or right to object to the fee agreement.

20. In the event of default, Plaintiff will immediately seek a default judgment that includes a one-third contingency fee as a reasonable attorneys fees and, according to the foregoing, Plaintiff will not give Defendant any further notice under Rule 55(b)(3) because Defendant has no legal right to object to the reasonableness of a one-third contingency fee given the prior proceedings.

PRAYER FOR RELIEF

Wherefore, having fully pled the causes of action within the Complaint, the Plaintiff demands a jury trial on all issues triable by jury and prays for a judgment against the Defendant for actual damages, consequential damages, treble damages, punitive damages, attorney's fees, prejudgment interest (and post-judgment interest on the original judgment), the costs of this action, post-judgment interest after the entry of judgment and such other and further relief as the Court may properly order.

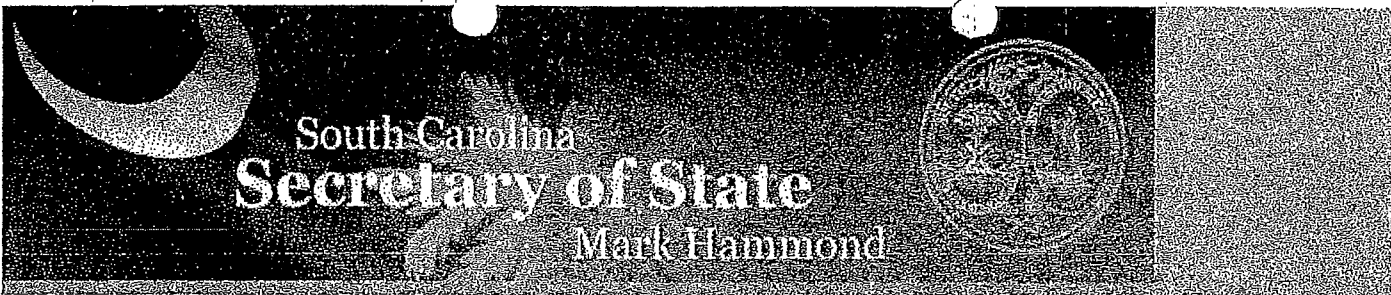
Respectfully submitted,



J. TODD KINCANNON
THE KINCANNON FIRM
P.O. Box 7901
Columbia, South Carolina 29202
Phone: 877.992.6878
Fax: 888.704.2010
Email: Todd@TheKincannonFirm.com
Attorney for Plaintiff

June 30, 2014

Exhibit 3



South Carolina
Secretary of State
Mark Hammond

PST SERVICES, INC.

Note: This online database was last updated on 6/19/2014 6:02:00 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Foreign
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	GEORGIA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	CORPORATION SERVICE COMPANY
ADDRESS:	1703 LAUREL STREET
CITY:	COLUMBIA
STATE:	SC
ZIP:	29201
SECOND ADDRESS:	
FILE DATE:	03/01/1990
EFFECTIVE DATE:	03/01/1990
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Merger Survivor	12/31/2013	SURVIVED MERGER WITH--PATHOLOGY SERVICE ASSOCIATES, LLC (SC LLC)	
Agent	12/17/2013	CHANGED AGENT/ADDRESS FROM--THE PRENTICE-HALL CORPORATION SYSTEM, INC.	
Forfeiture in Error	12/18/2008	FORFEITURE IN ERROR	
Forfeiture	11/18/2008	SCBOS Filing: ADMINISTRATIVE DISSOLUTION #2	
Agent	12/06/2007	CHG AGTS ADD THE PRENTICE-HALL CORPORATION SYSTEM, INC.	
Agent	06/01/2007	CHANGED AGT/ADD FROM-C T CORP SYSTEM	
Foreign Amendment	09/08/1999	CH NM FR-MEDAPHIS PHYSICIAN SERVICES CORP	Image
Agent	08/18/1999	CH AGT/ADD FR-PRENTICE HALL CORP	Image
Agent	06/11/1999	Agent Change of Address	Image
Merger Survivor	07/20/1998	SUR MER W/MEDICAL MANAGEMENT SCIENCES, INC.	Image
Agent	08/21/1995	CH AGT/ADD FR-C T CORP SYSTEM	Image
Merger Survivor	02/28/1994	SUR MER W/KING MANAGEMENT CORPORATION	Image
Merger Survivor	02/28/1994	SUR MER W/COMP MED, INC.	Image
Authority	03/01/1990	AUTHORITY	Film

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to

research information on business entities provided with our office. Updates are uploaded every 24 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201

Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2014-CP-40-6571

RECEIVED

OCT 27 2014

SC Court of Appeals

Ashely S. Griffith,

Appellant,

v.

Pathology Service Associates, LLC,

Respondent.

Proof of Service

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent Pathology Service Associates LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow by all by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Motion to Dismiss The Appeal for Lack of Jurisdiction

Counsel Served: J. Todd Kincannon, Esquire
The Kincannon Firm
6300-D St. Andrews Road
P. O. Box 7901 (29202)
Columbia, SC 29212



Jennifer B. Lee
Administrative Assistant

October 27, 2014

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

William C. Wood, Jr.
Tel: 803.255.9534
bill.wood@nelsonmullins.com

October 27, 2014

RECEIVED

OCT 27 2014

SC Court of Appeals

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

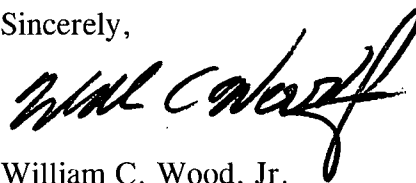
RE: Ashely S. Griffith v. Pathology Service Associates, LLC n/k/a PST Services,
Inc.
Civil Action No. 2013-CP-40-6571
Our File No.: 37578/01506

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of a Motion to Dismiss The Appeal For Lack of Jurisdiction in the above-referenced matter. Please file the original and return a clocked-in copy to me via our courier. Should you have any questions, please do not hesitate to contact me.

By copy of this letter, I am here serving the opposing party.

Sincerely,



William C. Wood, Jr.

WCWJR:jlee
Enclosures

cc: J. Todd Kincannon, Esquire