

Aug 25. 14

FILED  
2014 AUG 28 PM 12:45  
CONNIE REEL-SHEARIN  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

Mr. Carmichael T. Flowers  
Agency # 335945, RCT  
P.O. Box 2039, SB44  
Ridgeland, S.C. 29936

Tom. Connie Reel-Shearin  
Florence County Clerk of Court  
80 N. Irby St  
Florence, S.C. 29501

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OCT 30 2014

SC Court of Appeals

RE: C/A # 2013-CP-21-02319 (Summary Judgement HEARING)

DEAR MADAM Clerk,

A HEARING WAS held in the Florence County Court of  
Common PLEAS, ON AUG. 5. 14 @ 9:AM in THE MATTER  
of CARMICHAEL T. FLOWERS VS. Janel Namias.

Please provide me with the NAME AND ADDRESS of  
the Court Reporter who was present at the hearing.

With the kindest of Regards...

Sincerely,  
*Carmichael Flowers*

cc my file  
cc Court Admin.  
cc Defendants Atty. of Record  
SEE Enclosures

CERTIFIED: A TRUE COPY  
*Connie Reel-Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA County of FLORENCE CARMICHAEL T. FLOWERS Plaintiff	IN THE COURT OF COMMON PLEAS 12 <sup>TH</sup> Judicial Circuit  Case # 2013-CP-02319
- VS - JAMEL NAMIAS Defendant	Relief from Judgment of Order Pursuant to Rule 60(B) SCRCiv.Proc.

Introduction

I, THE UNDERSIGNED Plaintiff, IN Pro-SE, NOW MOVE PURSUANT TO SCRPC Rule 60(B), for RELIEF from Judgment of Order. THE LEGAL BASIS, THE Circuit Court MAY RELIEVE A party from final Judgment, WHERE MOVING PARTY DEMONSTRATES THE Judgment of Order WAS INDUCED by, AMONG OTHER THINGS, MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLECT. HILLMAN V. PINION EX REL ESTATE OF HILLMAN, 347 S.C. 253, 256, 554 SE2d 427, (C.T. App. 2001).

FACTS

THIS MATTER CAME BEFORE THE FLORENCE County Court of Common Pleas ON AUG. 5. 2014. THE DEFENDANT IN THIS MATTER THRU HER ATTY. filed A MOTION for Summary Judgment against THE plaintiff (CARMICHAEL FLOWERS) IN PRO-SE, SEEKING Judgment AS A MATTER OF LAW BASED UPON THE EXPIRATION OF THE STATUTE OF Limitations.

PRESENT AT THE CALL OF THE CASE WERE COUNSEL FOR DEFENDANT AND PLAINTIFF IN PRO-SE.

THE PLAINTIFF IN THIS MATTER PRESENTED CLAIMS AGAINST THE DEFENDANT FOR, BREACH OF CONTRACT, CONVERSION AND QUANTUM MERUIT.

THE STATUTE OF LIMITATIONS FOR BREACH OF CONTRACT AND CONVERSION IS THREE (3) YEARS, ACCORDING TO S.C. CODE OF LAWS, 15-3-530. "THE STATUTE OF LIMITATIONS", BEGINS TO RUN FROM THE DATE THE INJURED PARTY EITHER KNOWS OR SHOULD HAVE KNOWN, THAT A CAUSE OF ACTION EXIST FOR THE WRONGFUL CONDUCT, SEE EPSTEIN V. BROWN, 363 S.C. 372, 610 SE2D 816 (2005).

WHILE PLAINTIFF WAS ADDRESSING THE COURT IN REGARDS TO THE "DISCOVERY DATE", PLAINTIFF MAY HAVE MISREAD HIS NOTES OR "INADVERTENTLY" MISQUOTED THE ACTUAL DATE OF DISCOVERY, AT WHICH TIME THE JUDGE CONCLUDED THE SUMMARY JUDGMENT HEARING IN FAVOR OF THE DEFENDANT.

### APPLICABLE LEGAL STANDARD

THE PLAINTIFF MOVES FOR RELIEF FROM ORDER PURSUANT TO 60(B), S.C. CIV. PROC., ON MOTION AND UPON SUCH TERMS AS ARE JUST, THE COURT MAY RELIEVE A PARTY OR HIS REPRESENTATIVE FROM FINAL JUDGMENT, ORDER, OR PROCEEDING FOR MISTAKE, SURPRISE, INADVERTENCE, OR EXCUSABLE NEGLIGENCE;

IN DETERMINING WHETHER TO GRANT RELIEF FROM JUDGEMENT BASED UPON MISTAKE, INADVERTENCE, SURPRISE OR EXCUSABLE NEGLIGENCE, THE COURT MUST CONSIDER THE FOLLOWING FACTORS: (1) PROMPTNESS, (2) THE REASON FOR FAILURE TO ACT PROMPTLY, (3) THE EXISTENCE OF A MERITORIOUS DEFENSE, (4) PREJUDICE TO THE OTHER PARTY.

MOTION(S) FOR RELIEF FROM JUDGEMENT REST WITHIN THE SOUND DISCRETION OF THE COURT, AND THE CIRCUIT COURT'S FINDINGS WILL NOT BE DISTURBED ON APPEAL ABSENT ABUSE OF DISCRETION WHICH ARISES WHERE TRIAL WAS CONTROLLED BY ERROR OF LAW OR WHERE ORDER WAS BASED ON FACTUAL CONCLUSIONS WITHOUT EVIDENTIARY SUPPORT. S.C. R.C.V. PROC. 60(B)(1). SEE TRI-COUNTY ICE AND FUEL CO. V. PALMETTO ICE CO (S.C. 1990) 303 S.C. 237, 399 S.E.2D 799.

## ANALYSIS

Plaintiff HAD VERY LITTLE SLEEP, TRAVELED OVER 2 HOURS OF HIGHWAY WITH VERY LOUD MUSIC PLAYING WITHOUT CONSIDERATION AND WAS SEPARATED FROM HIS NOTES UNTIL ENTERING INTO THE COURTROOM, ITS PLAINTIFF'S BELIEF THAT HE MISQUOTED ETTONEOUSLY THE DISCOVERY DATE WHICH WAS WITHIN THE STATUTE OF LIMITATIONS.

Plaintiff, HOWEVER HAS MET THE 4 PRONGS AS STATED ABOVE.

(3)

Rule allowing COURT TO RELIEVE A PARTY FROM final judgment for MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE IS AN APPROPRIATE REMEDY FOR good-faith mistakes of FACT, IF ALL OTHER applicable factors ARE MET. SEE WILLIAMS V. WATKINS, 384 S.C. 319, 681 SE2d 914.

THE ORDER WHICH WAS GRANTED WAS INDUCED BY A MISTAKE, THE ACTUAL DATE OF DISCOVERY, (12-1-10) AS DEFINED BY THE ORDER OF THE FAMILY COURT, IS THE DATE OF DISCOVERY AND THE INSTANT MATTER BEFORE THIS COURT WAS FILED ON NOV. 29, 2012 IN MARLBORO, CO. WHICH IS REFLECTED BY THE DEFENDANT(S) MOTION FOR SUMMARY JUDGMENT, AND 13 MONTHS PRIOR TO EXPIRATION OF "THE STATUTE OF LIMITATIONS".

### CONCLUSION

FOR ALL THE ABOVE REASONS MOVANT HAS DEMONSTRATED, 1. A MERITORIOUS DEFENSE, 2. HAS DONE SO PROMPTLY, 3. THERE WAS NO DELAY, 4. THERE IS NO PREJUDICE BECAUSE OF THE FACT(S), MOVANT PRAYS FOR RELIEF FROM JUDGMENT/OR ORDER.

DATED AUG. 22, 2014

Jasper County

s/ 

STATE OF SOUTH CAROLINA  
County of Florence  
ARMICHAEL T. FLOWERS  
Plaintiff  
- VS -  
JANEL NAMIAS

IN THE COURT OF COMMON PLEAS  
12<sup>TH</sup> JUDICIAL CIRCUIT  
CA NO# 2013-CP-21-02319

Certificate of Service

FILED  
2014 AUG 28 PM 2:10  
CONNIE REEL-SHAW  
Clerk of Court  
CCCP & G.S.  
FLORENCE COUNTY, S.C.

I, THE UNDERSIGNED, Plaintiff in Pro  
HEREBY Certify THAT I HAVE SERVED Plaintiff's 60(B)  
MOTION UPON THE DEFENDANT'S ATTORNEY OF RECORD,  
Abbott & McKissick LAW firm, by depositing THE SAME  
in AN ENVELOPE AND depositing in THE U-S MAIL,  
Addressed AS follows:

Abbott & McKissick  
LAW firm, LLC  
P.O. BOX 148  
Florence, SC 29503

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OCT 30 2014  
SC Court of Appeals

*Armichael Flowers*

Aug 25 14  
Jasper Co.

CERTIFIED: A TRUE COPY  
*Connie Reel-Shaw*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA  
County of Florence

EXHIBIT  
IN THE COURT OF COMMON PLEAS  
12<sup>TH</sup> JUDICIAL CIRCUIT

Carmichael T. Flowers  
Plaintiff  
-VS-  
JAMEL NAMIAS  
Defendant

FILED  
AUG 4 9 48 AM  
CLERK OF COURT  
FLORENCE COUNTY, SC

Case No. 2013-CP-21-02319

Motion to Alter or Amend  
Judgement, Rule 60(c)(2) S.C. Civ. Proc.

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SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT ON AUG. 5. 14  
DUE TO DEFENSES AND MOTIONS FILED BY DEFENDANT'S  
ATTY. OF RECORD; THE LAST BEING MOTIONS FOR SUMMARY  
JUDGEMENT AND/OR JUDGEMENT ON THE PLEADINGS WHERE  
HE ALLEGES THAT THE INSTANT MATTER WAS NOT -  
COMMENCED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS.

DURING THE HEARING THIS MORNING I MAY HAVE  
MISSTATED THE WRONG DATE THE STATUTE OF LIMITATIONS  
WOULD HAVE BEGUN AND I SHOULD HAVE ENTERED THE  
ORDER FROM THE FAMILY LAW COURT OF THE HON.  
ARTHUR E. MOREHEAD AS AN EXHIBIT FOR THE RECORD.

I'M ASKING THIS COURT TO AMEND JUDGEMENT  
TO REFLECT THE CORRECT DATE OF THE START OF  
THE STATUTE OF LIMITATIONS AND RECONSIDER THE  
THE PLAINTIFF'S COMPLAINT. SEE EXHIBITS, (ORDER FROM  
FAMILY COURT, AND MEMORANDUM IN OPPOSITION TO  
DEFENDANT'S NOTICE OF MOTION AND MOTION FOR  
JUDGEMENT ON THE PLEADINGS AND/OR SUMMARY  
JUDGEMENT.

CERTIFIED A TRUE COPY  
Carmichael T. Flowers  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF South Carolina )  
County of Florence ) In THE Court of Common Pleas  
Civil Action NO. 2013-CP-21-02319

Carmichael T. Flowers,  
Plaintiff,

VS

Israel Namias,  
Defendant.

MEMORANDUM in Opposition TO  
Defendant's Notice of MOTION AND  
MOTION for Judgment on THE  
Pleadings AND for Summary Judgment

CERTIFIED: A TRUE COPY  
*Connie Reel-Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

2014 AUG 11 AM 9:48  
FILED  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

Plaintiff Flowers submits this memorandum  
MEMO in opposition to defendant's Notice of Motion  
AND MOTION for Judgment on the Pleadings AND/or  
Summary Judgment whereas this action was initially  
brought by summons and complaint (dated 6-29-12) IN  
THE COURT of Common Pleas of Marlboro County,  
AFTER this Court of Common Pleas for Florence County  
showed reluctance regarding processing and filing, SO  
AFTER THE 5-8-12 Verification of my financial

STATUS WITHIN South Carolina Dept. of Corrections [SCDC];  
THIS ACTION WAS FILED ON 11-29-12 IN Marlboro County Clerk's  
OFFICE.

DEFENDANT FILED AND SUBMITTED AN ANSWER TO THE  
COMPLAINT WHICH RAISED THREE (3) CAUSES OF ACTION.  
PLAINTIFF FILED ON (7/3/13) OBJECTIONS OR REPLY TO ANSWER.  
PLAINTIFF THEN FILED AN AFFIDAVIT RELEVANT TO PERSONAL  
PROPERTY AND ASSETS OF PARTIES ON (11/26/13).

SHORTLY THEREAFTER THIS ACTION WAS TRANSFERRED  
TO FLORENCE COUNTY COURT OF COMMON PLEAS PURSUANT  
TO RULE 82(b) OF SCRPC, DEFENDANT SUBMITTED (4/22/14)  
NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE  
PLEADINGS AND/OR SUMMARY JUDGMENT.

### Why Rule 12 (C) Motion should be Denied

PLAINTIFF ASSERTS STRONGLY THAT DEFENDANT'S RULE  
12 (C) MOTION UNDER SCRPC SHOULD BE DENIED. BAKER HOSP.  
V. FIREMAN'S FUND INC., 441 SE2D 822, 823 (1994), MCCURRY V.  
KEITH, 439 SE2D 861, 862, (CT. APP. 1994) AND GREGORY V.  
GREGORY, 292 S.C. 587, 590, 358 SE2D 144, 147, (CT. APP. 1987)

DEFENDANT'S (4-22-14) MOTION FOR JUDGMENT ON THE  
PLEADING DOES NOT REFERENCE ANY AUTHORITY AND/OR  
PRECEDENTS, OTHER THAN RULE 12 (C) OF SCRPC. BUT SEE  
TODD V. SOUTH CAROLINA FARM BUREAU MUT. INS., 278 SE2D 607, 609  
(1981). Todd SET FORTH THE VIEW, "WE ARE CONTAINED, HOWEVER  
UPHOLD THE ACTION OF THE TRIAL JUDGE IN OVERTULING THE DEMURRER  
ET. THE DEMURRER ATTACKS THE FOUR CORNERS OF THE PLEADING ON;

SEE Allegro, Inc v. Scully WL2465108 (5-28-14); 733 SE2d 144, (SC App 2012).

## Why Rule 56(b) MOTION should be denied

FLOWERS SET FORTH BELOW HEREIN MORE STRONGLY THAT DEFENDANT'S MOTION for Summary Judgment must be for more THAN ONE REASON. NAMIAS'S MOTION for Summary Judgment AVOIDS:

"THE plaintiff in His Complaint, PARAGRAPH 11 THAT ON OCT. 3, 2008, THE plaintiff WAS ARRESTED AND INCARCERATED SUCH THAT HE LOST VARIOUS ITEMS OF PERSONAL PROPERTY AND INCOME" (P. 1)

Although defendant's (6-7-13) ANSWER RAISED THE statute of limitations AS THE FOURTH (4<sup>TH</sup>) DEFENSE (P. 3), TAMMEL V. DSHORINE, 441 SE2d 329, 330 (Ct. App. 1994) Normally A PARTY MOVES ACCORDING TO Rule 12(b)(6) SCRPC FOR DISMISSAL DUE TO STATUTE OF LIMITATIONS. Spell vs. S.C. Dept. of Highway & public TRANS. (292 S.C. 228), 355 SE2d 860 (1987) RATHER THAN ONE PURSUES Rule 56 MOTION ON STATUTE OF LIMITATIONS defense Plaintiff's complaint SET FORTH "THE Couple purchased THE property AT 803 DIXIE ST Florence, S.C." (P. 2) WHICH SUGGESTED SOME TYPE OF COMMON LAW RELATIONSHIP EVEN IF IT WAS NOT RECOGNIZED BY Florence County family Court.

The (12-1-16) Order of the family Court defines the discovery date. THE Court ruled NO "COMMON LAW" MARRIAGE.

SO DEFENDANT'S STATEMENT, "THE plaintiff filed THIS ACTION IN THE MARLBORO County Court of Common Pleas ON NOV. 29. 2012, SERVICE WAS PROTECTED ON THE DEFENDANT ON MAY. 23 2013. THE MOTION for summary Judgment NOT ONLY BE DENIED BUT THE COURT SHOULD STRIKE THE DEFENSE - UNDER Rule 12(F) of SCRCP, MOREOVER "All properly pleaded factual Allegations ARE DEEMED Admitted for purposes of Considering THE motion for Judgment ON THE PLEADINGS," BAKER Hospital (supra).

Defendants (4-22-14) Rule 56(B) MOTION for Summary Judgment WAS filed ("Without supporting Affidavits"), Just Relying ON THE STATUTE of Limitations DEFENSE.

REY'D CANNON Richard P. McDONNELL, III D. MINI V. THE CONSOLIDATED School District of Aiken, 445 SE2d 638, 639, (1994).

HOWEVER FLOWERS'S ACTION IS NOT TIME BARRED FROM ANY point of VIEW.

June 17, 2014

Respectfully Submitted,  
Carmichael Flowers  
IN PRO-SE

Carmichael T. Flowers  
Agency #335945, RCI  
P.O. Box 2039, SB44  
Lidgeland, SC 29936

STATE OF SOUTH CAROLINA  
County of Florence  
Carmichael T. Flowers  
Plaintiff

VS-  
Samuel Namias  
Defendant

In THE Court of Common Pleas  
12<sup>TH</sup> Judicial Circuit

C/A NO. 2015-CP-21-2319

Certificate of Service

I THE UNDERSIGNED, HEREBY Certify THAT I HAVE  
SERVED Plaintiff's Rule 59(E) motion upon THE Defendants  
ATTY. of RECORD, by placing THE SAME in an envelope  
postage prepaid, addressed AS follows:

Michael C. Abbott  
P.O. BOX 148  
Florence, SC 29503

FILED  
2015 AUG 11 AM 9:48  
CONNIE REEL-SHEARIN  
CCJP & GS  
FLORENCE COUNTY, SC

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SC Court of Appeals

*Carmichael Flowers*

Aug. 5. 14

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*Connie Reel-Shearin*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA )

COUNTY OF FLORENCE

CARMICHAEL T FLOWERS

JANEL NAMIAS

FILED

2010 DEC -3 PM 2:04

Plaintiff(s) )  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC  
Defendant(s) )

IN THE FAMILY COURT  
12<sup>TH</sup> JUDICIAL CIRCUIT

JUDGMENT IN A  
FAMILY COURT CASE

Docket No: 2009-DR-21-2600

CHECK ONE:

- DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and an order rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC
  - Rule 41(a), SCRPC (Vol. Nonsuit)
  - Rule 43(k), SCRPC (Settled)
  - Family Court Benchmark
  - Other: \_\_\_\_\_

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SC Court of Appeals

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_, S.C.

\_\_\_\_\_  
Family Court Judge

This judgment was entered on December 3, 2010 and a copy mailed first class on December 3, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

**FOR THE PLAINTIFF(S)**

Address:  
CARMICHAEL T FLOWERS #335945  
LEE CORRECTIONAL INSTITUTE  
990 WISACKY HWY  
BISHOPVILLE SC 29010

**FOR THE DEFENDANT(S)**

Address:  
PINILLA, E MICHAEL  
320 S COIT ST  
FLORENCE SC 29501

Connie Reel-Shearin  
Clerk of Court

Custodial Parent (if applicable): \_\_\_\_\_

CERTIFIED: A TRUE COPY

Connie Reel-Shearin

CLERK OF COURT, C. P & G. S  
FLORENCE COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Carmichael T. Flowers

Plaintiff,

v.

Janel Namias,

Defendant.

2010 DEC -3 PM 2:01

IN THE FAMILY COURT OF THE  
TWELFTH JUDICIAL CIRCUIT

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC  
Docket No. 2009-DR-21-2600

ORDER

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OCT 30 2010

SC Court of Appals

ATTORNEY FOR PLAINTIFF:  
*Pro Se*

HEARING DATE:  
November 8, 2010

ATTORNEY FOR DEFENDANT:  
E. Michael Pinilla

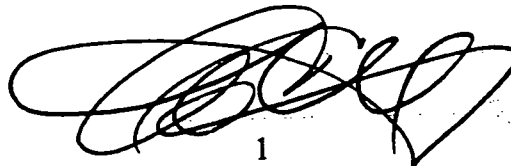
JUDGE:  
The Honorable Arthur E. Morehead, III

GUARDIAN AD LITEM:  
n/a

COURT REPORTER:  
Krystal J. Smith

This matter was before the Court pursuant to the Plaintiff's Summons and Complaint that was filed on November 11, 2009. The Defendant was properly served with the Plaintiff's Summons and Complaint on September 16, 2010. The Defendant filed an Answer and Counterclaims on October 5, 2010. This hearing was initially scheduled for October 11, 2010 and subsequently continued to November 8, 2010. The Plaintiff was provided with Notice of this Final Hearing and the South Carolina Department of Corrections transported him to the Florence County Courthouse pursuant to an Order of Transportation filed with this Court. Present at the hearing were the Defendant and her attorney, E. Michael Pinilla. The Plaintiff appeared *Pro Se*.

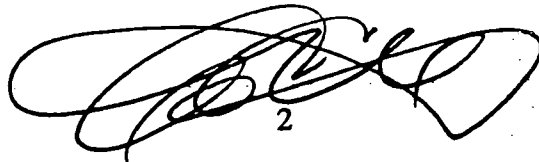
CERTIFIED: A TRUE COPY



Connie Reel-Shearin  
CLERK OF COURT, C. P & G. S  
FLORENCE COUNTY, S.C.

**BASED UPON THE TESTIMONY AND ARGUMENTS PRESENTED, AS WELL AS THE ENTIRE FILE IN THIS MATTER, I MAKE THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

- (1) The Plaintiff is a resident of the State of South Carolina.
- (2) The Defendant is a citizen and resident of Florence County, South Carolina, and has so resided for more than one (1) year prior to the commencement of this action.
- (3) This is a final hearing regarding issues of common law marriage and dissolution of marriage.
- (4) The Court has jurisdiction over the parties and the subject matter of this action and venue in Florence County is proper.
- (5) The Plaintiff requested the divorce of a common law marriage and the distribution of property. The Plaintiff indicated the following in his pleadings and testimony: that Plaintiff and Defendant began to cohabit as Husband and Wife, in 2004, in the State of New Jersey; that in 2006, Plaintiff and Defendant continued to live together as Husband and Wife when they moved to Virginia Beach, Virginia; that also in 2006, the Plaintiff and Defendant moved to a rental property located on Homestead Street in Florence, South Carolina; that in 2007, the Plaintiff <sup>and</sup> Defendant jointly purchased, as Husband and Wife, a property located at 803 Dixie Street in Florence, South Carolina, and; that in 2008, the Plaintiff and Defendant jointly purchased, as Husband and Wife, a timeshare located at Atlantic Avenue, Virginia Beach, Virginia.
- (6) The Defendant denied all of the Plaintiff's allegations and asserted, an affirmative defense, that the Plaintiff and Defendant were not common law married. The Defendant also requested a restraining order and attorney's fees.
- (7) **COMMON LAW MARRIAGE:** I find that a valid common law marriage did not exist between the parties; therefore, no divorce or equitable distribution pursuant to the laws of South Carolina may be ordered by this Court. The law of whether a valid common law marriage exists is well defined in our state. The issue before the Court during this hearing has been litigated in: Kirby v. Kirby, 241 S.E.2d 415(1978), Owens v. Owens, 466 S.E.2d 373 (Ct. App. 1996), Yarbrough v. Yarbrough, 314 S.E.2d 16 (Ct. App. 1983), and Prevatte v. Prevatte, 377 S.E.2d 114 (Ct. App. 1989).




2

All of these cases clearly require the Plaintiff to prove by the greater weight of the evidence that the parties were married by common law.

(8) I find that the Plaintiff has failed to meet his burden of proof. The Plaintiff's own statements that he and the Defendant held themselves out as Husband and Wife are not sufficient to show that a common law marriage existed. The Defendant, in her case in chief, denied that the parties held themselves out as Husband and Wife. Additionally, the Defendant clearly refuted the Plaintiff's testimony that the parties began cohabitating as Husband and Wife, in the year 2004, in the State of New Jersey. Defendant's Exhibit Three shows that the Defendant did not even have capacity to marry until May of 2007, when a Final Judgment of Divorce was entered in the State of New Jersey. Defendant's Exhibit Three clearly shows that in 2004, 2005, and 2006, the parties could not have been married. Furthermore, Defendant's Exhibit One refutes the Plaintiff's claim that the parties jointly purchased a home located at 803 Dixie Street in Florence, South Carolina. Defendant's Exhibit One lists the Deed of this property solely in Defendant's name. Likewise, in Defendant's Exhibit Two, the timeshare purchased, in 2008, in Virginia Beach, Virginia, is solely in the Defendant's name and lists her as "a single woman." The testimony of both the Plaintiff and the Defendant confirms that the parties did not file joint tax returns and no children were born from their relationship. Finally, the Defendant presented her brother as a witness who testified that he never saw nor heard the parties hold themselves out as Husband and Wife.

(9) **JURISDICTION:** I find that this Court does not have jurisdiction to apportion or divide any property of the parties because the totality of the evidence establishes that these parties were not common law married. However, this Order does not prohibit the Plaintiff from seeking a cause of action against the Defendant in a court with proper jurisdiction.

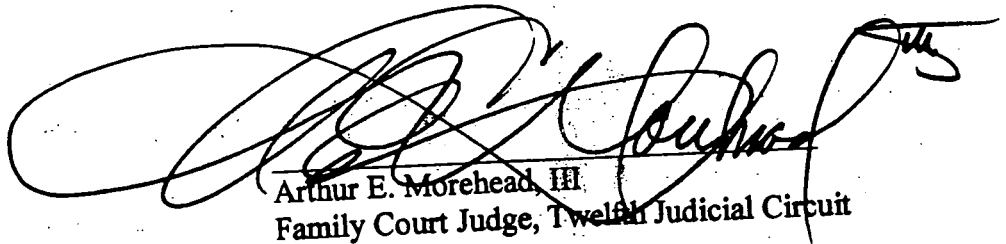


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**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

- a. The parties in this matter are not now nor have they ever been common law married; and
- b. The Complaint of the Plaintiff is hereby dismissed.

**IT IS SO ORDERED!**



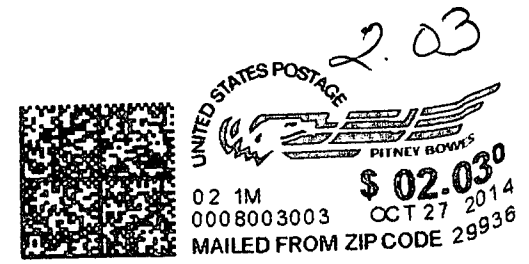
Arthur E. Morehead, III  
Family Court Judge, Twelfth Judicial Circuit

Florence, South Carolina

December 1, 2010

Failure to comply with the terms of this Order may constitute Contempt of Court and may be punishable by a fine, a public work sentence or by imprisonment, or a combination thereof, in the discretion of the Court, but not to exceed imprisonment for one (1) year, a fine of \$1,500.00, a public work sentence not to exceed 300 hours or any combination thereof, as provided by S.C. Code Section 63-3-620.

Mr. Carmichael T. Flowers  
Agency # 335945, RC I  
P.O. Box 2039, SB39  
Ridgeland, S.C. 29936



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OCT 30 2014

**SC Court of Appeals**

S.C. Court of Appeals  
1015 Sumter St  
Columbia, S.C. 29201

**RIDGELAND CORRECTIONAL  
INSTITUTION**

**OCT 27 2014**

**MAILROOM**