

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Carmichael T. Flowers,

Plaintiff,

vs.

Janel Namias,

Defendant.

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

C/A #2013-CP-21-02319

NOTICE OF MOTION  
AND MOTION FOR  
JUDGMENT ON THE PLEADINGS  
AND/OR SUMMARY JUDGMENT

**RECEIVED**

NOV 03 2014

**SC Court of Appeals**

TO: THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service of this notice upon you or as soon thereafter as counsel may be heard, counsel for the Defendant will move before the Presiding Judge of the Florence County Court of Common Pleas for an order pursuant to Rule 12(c) and/or Rule 56 of the South Carolina Rules of Civil Procedure seeking judgment in her favor on the pleadings and/or summary judgment. The grounds for this motion are that no genuine issue of material fact exists and the Defendant is entitled to judgment as a matter of law.

More specifically, the Plaintiff alleges in his Complaint in Paragraph 11 that "on October 3, 2008, the Plaintiff was arrested" and incarcerated such that he lost various items of personal property and income allegedly due and owing to him by the Defendant. The Plaintiff filed this action in the Marlboro County Court of Common Pleas on November 29, 2012. Service was perfected on the Defendant on May 23, 2013. Rule 3 of the South Carolina Rules of Civil Procedure states that an action is commenced upon filing the Summons and Complaint within the applicable statute of limitations and actual service within 120 days after filing.

Reviewing the allegations contained within the Plaintiff's Complaint in the light most favorable to him, he did not commence his action against the Defendant until more than four and

one-half years after the facts allegedly giving rise to his causes of action. Therefore, the Plaintiff's claims are barred by any and all applicable statutes of limitation and/or the equitable doctrine of laches. In short, the Plaintiff has simply failed adequately to protect his rights by failing timely to pursue his actions against the Defendant. Thus, the Defendant is entitled to judgment in her favor.

The Defendant will rely upon such pleadings as have been filed, and the statutory and common law in the State of South Carolina in support of her motion.

Respectfully submitted,



---

**MICHAEL C. ABBOTT**  
Attorney for Defendant

Florence, SC  
April 22, 2014

**ABBOTT & MCKISSICK LAW FIRM, LLC**  
702 W. Evans Street  
Post Office Box 148  
Florence, SC 29503  
(843) 669-0089  
(843) 669-0085 fax  
[mcabbott@abbottmckissicklaw.com](mailto:mcabbott@abbottmckissicklaw.com)

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Carmichael T. Flowers,

Plaintiff,

vs.

Janel Namias,

Defendant.

IN THE COURT OF COMMON PLEAS  
TWELFTH JUDICIAL CIRCUIT

C/A #2013-CP-21-02319

FILED  
2014 AUG 12 PM 12:30  
CORINNE REIF-SHELDON  
CLERK  
CCCP & CS  
FLORENCE COUNTY, S.C.

ORDER GRANTING  
SUMMARY JUDGMENT

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NOV 03 2014

SC Court of Appeals

This matter came before me on August 5, 2014 in the Florence County Court of Common Pleas. Defendant Janel Namias filed a Motion for Judgment on the Pleadings and/or Summary Judgment against the Plaintiff, Carmichael Flowers, seeking judgment as a matter of law based upon the expiration of the statute of limitations and laches. Present at the call of the case were counsel for the Defendant and the Plaintiff appearing pro se.

From reviewing the Complaint, it appears that the Plaintiff has presented claims against the Defendant for breach of contract, conversion, and, liberally construed, quantum meruit. The statute of limitations for breach of contract and conversion is three years according to S.C. Code Ann. §15-3-530. It is well settled law in South Carolina that “under the discovery rule, the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.” Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005). The Plaintiff filed his action in the Marlboro County Court of Common Pleas on November 29, 2012. The Plaintiff alleges in his Complaint in paragraph 11 that “on October 3, 2008, the Plaintiff was arrested” and incarcerated due to criminal domestic violence and malicious injury to real and personal property

CERTIFIED: A TRUE COPY  
Corinne Reif-Sheeldon  
CLERK OF COURT C.P. & C.S.  
FLORENCE COUNTY, S.C.

As indicated above, the statute of limitations for breach of contract and conversion is three years from the date the complainant knew or should have known a potential cause of action exists. It is clear from reviewing the Plaintiff's Complaint and his prior divorce action that he knew or should have known of a potential cause of action at the latest on November 17, 2009 when he filed his pro se divorce action. Interestingly, in argument before the court, the Plaintiff indicated his discovery date was July 22, 2009. Nevertheless, using the last possible date on which the Plaintiff knew or should have known he had a claim against the Defendant, November 17, 2009, the Plaintiff did not file this lawsuit until more than three years after that date, thus implicating the statute of limitations.

It is well settled law in South Carolina that the standard for granting judgment as a matter of law requires that there be no genuine issue of material fact. I find and conclude based upon the Plaintiff's Complaint, the arguments of counsel, and the Plaintiff himself, that no genuine issue of material fact exists with regard to when the Plaintiff knew or should have known that a potential cause of action against the Defendant existed. Therefore, the Defendant is entitled to judgment as a matter of law as to the actions for breach of contract and conversion given that more than three years passed before the Plaintiff filed his Complaint.


Arguably, the Plaintiff's Complaint in paragraph 15 seeks recovery in quantum meruit allegedly for payment of services rendered in helping rehabilitate the Defendant's house. The Plaintiff states in paragraph 11 of his Complaint that on October 3, 2008, he was arrested on criminal domestic violence and malicious injury to real and personal property of which he had equal ownership. The property the Plaintiff alludes to is the house solely deeded to the Defendant (Complaint paragraph 5) for which he seeks payment of services rendered in helping to rehabilitate. However, clearly from the Plaintiff's own Complaint, it appears that he

maliciously injured that real and personal property that he previously allegedly rehabilitated. Thus, the Plaintiff's hands are unclean and any possible "enrichment" which would have befallen the Defendant, was undone by the Plaintiff's own malicious injury to that real and personal property. It would cause prejudice to the Defendant under these circumstances to allow the presumptive action for quantum meruit to go forward given the significant length of time which has passed since his alleged improvements to the home which he later destroyed, given that the Defendant no longer owns the home and any evidence she could use to defend the action such as receipts to repair the damage done by the Plaintiff have since been lost.

Therefore, I find that the Plaintiff's unreasonable delay has caused the Defendant to detrimentally change her position and that the Plaintiff's own unclean hands in causing the damage to the property at issue requires a finding that the Plaintiff's equitable claims be dismissed pursuant to the doctrine of laches.

AND IT IS SO ORDERED.

Florence, SC  
8/6, 2014

  
HONORABLE WILLIAM H. SEALS,  
Florence County Court of Common Pleas

2014 AUG 12 PM 12:38  
CONNIE REEL-SHERMAN  
CCCP # 15  
FLORENCE COUNTY, SC

FILED

VERIFIED: A TRUE COPY  
of the original  
CLERK OF COURT C.P. # 108  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA  
County of Florence

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

FILED

Carmichael T. Flowers

2014 AUG 1 AM 9:48

Plaintiff

Case No. 2013-CP-21-02319

FLORENCE COUNTY, SC

-VS-

JANEL NAMIAS  
Defendant

Motion TO Alter or Amend  
Judgement, Rule 59(E) S.C. Civ. Proc.

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NOV 03 2014

THIS MATTER CAME BEFORE THE COURT OF APPEALS. 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 Limitation  
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, SC

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

CAMMICHAE T. FLOWERS,  
Plaintiff,

VS

JANEL HAMIAS,  
Defendant.

RECEIVED

NOV 03 2014

SC Court of Appeals

14 AUG 11 AM 9:48  
DONNIE REEL-SHEARIN  
CCOP & GS  
FLORENCE COUNTY, SC

FILED

MEMORANDUM in Opposition TO  
DEFENDANT'S Notice of MOTION AND  
MOTION for Judgment on THE  
PLEADINGS AND /or Summary Judgment

CERTIFIED A TRUE COPY  
Janel Hamias  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

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 ONLY"

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 AVERRED:

"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), *Tanyel v. Dshorjue*, 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. 2013-CP-21-2319

Certificate of Service

I THE UNDERSIGNED, HEREBY CERTIFY THAT I HAVE SERVED Plaintiff's Rule 59(E) motion upon THE DEFENDANT'S 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  
2013 AUG 11 AM 9:48  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

Aug. 5. 14



RECEIVED

NOV 03 2014

SC Court of Appeals

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

- VS -

JAMEL NAMIAS  
Defendant

IN THE COURT OF COMMON PLEAS  
12<sup>TH</sup> Judicial Circuit

C/A NO. # 2013-CP-02319

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 JUDGEMENT 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 NEGLIGENCE. 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 EXISTS 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 JUDGMENT 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 ETONIOUSLY 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

*Carroll Flowers*

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

IN THE COURT OF Common Pleas  
12<sup>TH</sup> Judicial Circuit  
C/A NO.# 2013-CP-21-02319

- VS -  
JANEL NAMIAS

Certificate of Service

FILED  
2014 AUG 28 PM 2:00  
CONNIE REEL-SHELDON  
CCJP & GS  
FLORENCE COUNTY

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

RECEIVED  
NOV 03 2014  
SC Court of Appeals

Aug 25 14  
Jasper Co.

Carmichael Flowers

CERTIFIED: A TRUE COPY  
Clerk of Court C.P. & G.S.  
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

Carmichael T. Flowers

Plaintiff,

v.

Janel Namias,

Defendant.

**FILED**

2010 DEC -3 PM 2:01

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

IN THE FAMILY COURT OF THE  
TWELFTH JUDICIAL CIRCUIT

Docket No. 2009-DR-21-2600

**ORDER**

**RECEIVED**

NOV 03 2014

**SC Court of Appeals**

**ATTORNEY FOR PLAINTIFF:**  
*Pro Se*

**HEARING DATE:**  
November 8, 2010

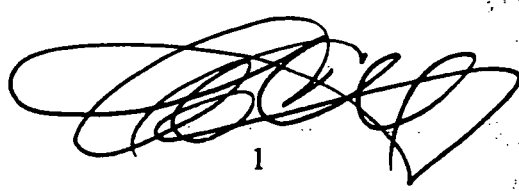
**ATTORNEY FOR DEFENDANT:**  
E. Michael Pinilla

**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*.



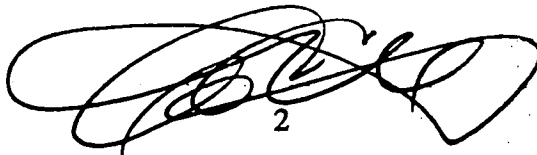

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*Connie Reel-Shearin*

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 cohabitate 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).

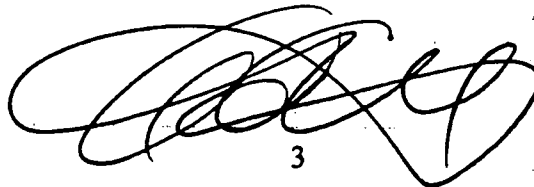


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All of these cases clearly require the Plaintiff to prove by the greater weight of the evidence that the parties were married by common law.

- (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.

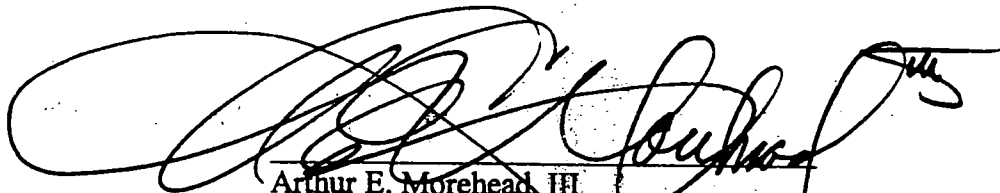


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**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

- 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!



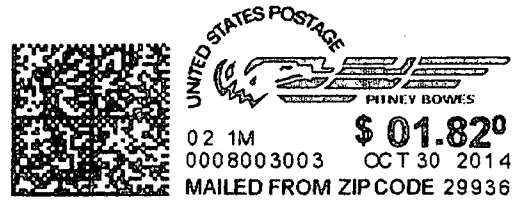
Arthur E. Morehead, III  
Family Court Judge, Twelfth Judicial Circuit

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, RCI  
P. O. Box 2039, SB 39  
Ridgeland, S.C. 29936



**RECEIVED**  
NOV 03 2014

**SC Court of Appeals**

S.C. Court of ~~App~~ Appeals  
1015 SUMNER ST  
Columbia, S.C. 29201

**RIDGELAND CORRECTIONAL  
INSTITUTION**  
**OCT 30 2014**  
**MAILROOM**



9 x 12



THE DEPARTMENT OF CORRECTIONS HAS NEITHER  
CENSORED NOR INSPECTED THIS ITEM. THEREFORE  
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY  
FOR ITS CONTENTS.

RIDGELAND CORRECTIONAL INSTITUTION  
S.C. DEPARTMENT OF CORRECTIONS