

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT  
C.A. NO.: 2004-CP-23-03000

William Tobias and Elena Tobias, )  
 )  
Plaintiff )

v. )

Ruby Lee Rice, )  
 )  
Defendant )

**ORDER**

FILED  
MAY 23 2014  
CLERK OF COURT

This matter was before me pursuant to Defendant's Motion to Alter or Amend and for Relief from Judgment or for New Trial on August 19, 2014.

Present were the Defendant, represented by her attorney, George E. LaFaye, IV, and counsel for the Plaintiffs. Randall S. Hiller, Esquire.

Defendant argues that the Motion, although filed May 23, 2014, is timely due to the fact that the Clerk's office did not forward a stamped, filed, signed copy of the Order directly to Ms. Rice who appeared *Pro Se* at the trial. Plaintiffs' counsel provided the Court with evidence that the proposed Order had been copied to Ms. Rice at the same time it was delivered to the Court, Ms. Rice had been noticed of its existence in a claim for surplus funds filed in January 2014 with the Master in Equity for Greenville County and this Court is aware that it announced its original ruling from the bench in Ms. Rice's presence at the conclusion of the trial of this case.

Notwithstanding the issue of the timeliness of the Motion the Defendant essentially argues that she is entitled to a new trial because she was surprised by the setting of this case for trial, that she is entitled to an offset of the judgment and that she "believes" that some of the exhibits entered in trial "are not what Mr. Tobias claimed them to be".

The latter is easily disposed of as the Court specifically reviewed with the Defendant the perils and pitfalls of representing herself and the benefits of retaining counsel prior to the commencement of the trial. It is notable that due to an appeal of the

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original action this case had been pending for over 10 years prior to the trial therefore any claim of surprise or undiscovered evidence is especially untenable.

Plaintiffs' counsel conceded at the hearing that Plaintiffs had in fact collected the sum of \$143,699.54 prior to the second trial in this case. Those funds were generated as a result of a foreclosure sale which occurred while the prior judgment was in effect and in which surplus funds remained after the foreclosure. Plaintiffs made a claim on those funds at which time Ms. Rice neither made a claim nor appeared at any of the hearings associated with the awarding of those surplus funds.

Defendant argues that not only is the Defendant entitled to a credit but should also be entitled to interest at the prejudgment rate from the date those funds were awarded by Judge Simmons to the Plaintiffs. This argument is unsupported by statute or case law. A Court in 2007 found that the Defendant was liable to the Plaintiff for approximately \$211,000.00 in damages plus specific performance of the sale of certain properties. This Court, on retrial, found the Defendant was responsible for \$294,770.00 in damages as Plaintiff had abandoned the specific performance claim due to the properties being foreclosed upon in the interim. The Defendants' proposition now is that even though she failed to plead or even argue payment, accord and satisfaction or setoff as she was required to do and although she has been indebted, as confirmed by this Court's Order, to the Plaintiff since 2004 in the amount of almost \$300,000.00, that she is somehow entitled to get interest on the prepayment of that indebtedness. I find no basis in law or statute which would justify or entitle an award of interest to a Defendant for paying a portion of damages he or she had created in advance of a final judicial determination of that amount. Although I find that there is no equitable or legal basis to award prejudgment interest to the non-prevailing party in a lawsuit the Defendant's claim fails as a matter of law for failing to even request pre-judgment interest in the pleadings. In order to be entitled to prejudgment interest it must be requested in the pleadings and if it is not it cannot be recovered. *Tiley v. Pacesetter Corp.*, 355 S.C. 361, 375-376, 585 S.C. 2<sup>nd</sup> 292, 299 (2003); *Hopkins v. Hopkins*, 343 S.C. 301, 540 S.C. 2<sup>nd</sup> 454 (2000).

However, I do find that post-judgment interest payable to the Plaintiff should not accrue or have accrued on the amount which had previously been paid.

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EC

In summary, I find no legal or equitable basis to order a new trial and those portions of the Defendant's Motion are denied.

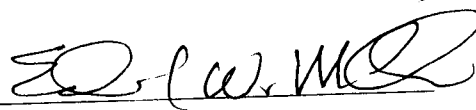
I grant the Defendant's Motion to the extent that the judgment does not reflect the prepayment and the judgment total shall be amended to reflect the amounts previously paid retroactive to the date of the original judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Defendant's Motion pursuant to Rule 59(a) and Rule 60(3) are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the original Order and judgment filed on December 9, 2013 is hereby amended to reflect payments previously received by the Plaintiff in the amount of \$160,677.65.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the Clerk of Court is hereby ordered to amend the judgment index as set forth on the SCRCF form 4(C) filed with the Clerk of Court on December 9, 2013 to reflect a judgment amount to be enrolled of \$134,092.34.

AND IT IS SO ORDERED.



Edward W. Miller

Circuit Court Judge, 13<sup>th</sup> Circuit

Dated: 7/8/14  
Greenville, South Carolina

William and Elena Tobias

Ruby Lee Rice

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Randall S. Hiller

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

RECEIVED

OCT 30 2014

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
William & Elena Tobias	Ruby Rice	\$134,092.34
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*E. J. W. Miller*  
Circuit Court Judge

2130  
Judge Code

*8/8/14*  
Date

A Certified Copy



STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

William and Elena Tobias )

Plaintiff. )

vs. )

Ruby Lee Rice )

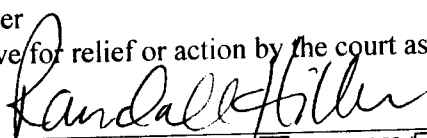
Defendant. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2004-CP-23-03000

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

2014 SEP 23 PM 11:42

Plaintiff's Attorney: Randall S. Hiller, Bar No. 2513 Address: 850 Wade Hampton Blvd., Greenville, SC 29609 Phone: 232-0026 Fax 242-4692 E-mail: rsh@rshpa.org Other: ahk@rshpa.org		Defendant's Attorney: George Lafaye, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
<b>SECTION I: Hearing Information</b>			
Nature of Motion: _____		Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
Estimated Time Needed: _____			
<b>SECTION II: Motion/Order Type</b>			
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant		August 27, 2014 Date submitted	
<b>SECTION III: Motion Fee</b>			
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)			
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____			
<b>JUDGE'S SECTION</b>			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		JUDGE CODE _____ Date: _____	
<b>CLERK'S VERIFICATION</b>			
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____			