

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

CHARLESTON HARBOR RESORT MARINA,)

Plaintiff,)

VS.)

PAUL DAVIS,)

Defendant.)

CASE NO.:2009-JG-10-685

 **COPY**

Hearing before the

Honorable Mikell R. Scarborough, reported by Bernadette A.

Cali, CSR and Notary Public, at 3:00 p.m. on August 19,

2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: William A. Scott, Esq.
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For the Defendant: John Hughes Cooper, Esq.
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Bernadette A. Cali, CSR
Notary Public

1 (Hearing commenced.)

2 THE COURT: Which case is it you're here for?
3 Charleston Harbor Resort Marina versus Davis?
4 Charleston Harbor versus Paul Davis. Bill Scott for
5 Plaintiff and John Hughes Cooper for Defendant.
6 Charleston Magistrate's Court and case number 2009 -- I
7 assume it was CP-10 originally?

8 MR. SCOTT: This is a judgment from the small
9 claims court.

10 THE COURT: Okay. Small claims court judgment, so
11 it's been assigned judgment number 2009-JG-10-685.
12 This is Mr. Cooper's motion for relief from judgment is
13 what we're here for today?

14 MR. COOPER: Yes, Your Honor. I first want to
15 thank Your Honor for working us in. There were
16 supplemental proceedings set and it's a big convenience
17 of my client not to have to come from Newberry, if the
18 judgment is to be set aside.

19 It's our position, Your Honor, that -- as Your
20 Honor certainly knows that when a defendant is not
21 properly served the Court has no jurisdiction of the
22 defendant. My client was not properly served in small
23 claims court.

24 Mr. Scott and the Charleston Harbor Marina got a
25 judgment by default without giving him notice, and they

1 are now trying to enforce it, and my client came to me,
2 and I moved to have it set aside for failure of service
3 of process.

4 Attached to my motion is the return of private
5 process server from smalls claims court. That's
6 Exhibit A to my motion, Your Honor. And it indicates
7 that the process server -- says he served personally
8 delivering copies to the authorized agent and he says
9 Joyce Lockhart, Corporate Systems Inc., Joyce
10 Lockhart-registered agent, is who he served according
11 to his affidavit. That's Exhibit A.

12 Then Exhibit B is affidavit of Joyce Lockhart and
13 she swears that she's never been the agent for service
14 of process for Paul Davis, and that she didn't have
15 authority to accept it for him and she -- the affidavit
16 doesn't say it but she never did notify him of that.

17 Now, in the spirit of full disclosure the
18 affidavit also says -- because I wanted the Court to
19 know what the relationship was. Lockhart works at a
20 company called Corporate Systems, Inc. And she was --
21 and the company was authorized agent for a separate
22 company in which Mr. Davis had an interest, which he
23 had let lapse and so at that time she didn't notify
24 anybody but she was authorized at one time to be agent
25 for receiving process for the corporation.

1 The corporation was Chesapeake Venture
2 Corporation. So she was authorized to accept service
3 for them, but Mr. Scott didn't sue the corporation. He
4 sued Mr. Davis. She was not authorized to accept,
5 therefore, Mr. Scott's action has to fail.

6 THE COURT: All right. Okay. Thank you,
7 Mr. Cooper. Mr. Scott?

8 MR. SCOTT: I would just like to -- this is a
9 memorandum and some documents.

10 As with all cases this has a little more -- Your
11 Honor, first off, even a motion to set aside a judgment
12 on the basis that it's void is -- can be denied based
13 on failure to file a motion within a reasonable time.
14 It's also the sound discretion of the court, which is
15 the case that I just gave up to you, McDaniel versus
16 United Fidelity. It's 324 South Carolina 639.

17 And there really are several reasons this case
18 should not be -- this judgment should not be set aside.

19 The first is, Mr. Davis has known about this
20 judgment for well over a year before he filed this
21 motion.

22 The second is, based on the information we had
23 from Mr. Davis on the boat, the ownership of the boat,
24 and his interest in the boat, we served the proper
25 party. Okay? That was -- and I'll go through this.

1 I've set up the facts in this case because they are
2 sort of involved.

3 What is also interesting is there is no affidavit
4 for Mr. Davis that says he didn't know about this
5 Complaint. There is no meritorious defense. There is
6 no dispute. He had the boat at the Charleston Harbor
7 Resort Marina; didn't pay them; took the boat from
8 there and he owes the money.

9 Next, Your Honor, this is really an untimely
10 appeal from a judgment from the small claims court.
11 Again, they've known about this judgment for well over
12 a year.

13 Finally, even if it was granted, the case would be
14 remanded back to the small claims court. There are
15 issues about the information on the -- on his lease
16 that would bring this up as a fraudulent matter. We
17 would be able to go right back to the small claims
18 court. We would get the same judgment. It would have
19 interest at the prejudgment rate which is a point and a
20 half higher than the post judgment interest rate, and
21 he would be subjected to additional attorneys fees. It
22 doesn't make any sense under the circumstances.

23 Your Honor, what I've done is put together the
24 facts of this case in a detailed outline, chronology if
25 you will, in our response.

1 This boat was originally purchased in -- on May 26
2 of 2005. It's a 45-foot sailboat, center cockpit. It
3 was registered originally in the name of Chesapeake
4 Venture Corporation, a Delaware corporation with an
5 address of 101 North Fairfield Drive, Dover, Delaware.

6 The documentation lapsed the next year. In
7 November -- on November 30 -- and, Your Honor, on that
8 first document there is no way of finding out who Paul
9 Davis is. The documentation itself, which is included
10 in here, and the title, we've done an abstract of the
11 title on this vessel to the Coast Guard, and the
12 documentation. They don't reference Paul Davis at all.
13 They go to a Chesapeake Venture Corporation.

14 The documentation lapsed in -- on June 30 of 2006.
15 At that time it was not reregistered in South Carolina
16 where it was. It was basically an illegal vessel
17 operating illegally.

18 On April 19 of 2007 Mr. Davis entered into the
19 agreement that's -- that was subject matter of this
20 lawsuit and he listed him as the owner, Paul Davis, and
21 his address is 101 North Fairfield Drive, Dover,
22 Delaware.

23 The contract, by the way, provides for venue in
24 South Carolina which is why it's always here.

25 THE COURT: All right.

1 MR. SCOTT: On March 1st of 2008 Chesapeake
2 Venture Corporation ceased to do business. It
3 disappeared.

4 THE COURT: 2008?

5 MR. SCOTT: 2008. While the boat was there. But
6 it ceased doing operations. So the boat -- there was
7 no operation. I mean, the corporation was deleted
8 because it no longer -- it didn't pay taxes, didn't do
9 anything, didn't file corporate formalities.

10 In May of 2008 Mr. Davis takes the boat away from
11 Charleston Harbor Resort Marina and takes it to Sunset
12 Cay on Folly Beach where he signs another agreement.

13 And, Your Honor, at that time that's when the
14 breach occurred. But the only information we have is a
15 boat that's documented that's been deleted. It's not
16 registered in South Carolina. The corporation does not
17 exist. The only information we have on the owner is
18 Paul Davis, 101 North Fairfield Drive.

19 Mr. Davis signs a new lease agreement at Folly
20 Beach with Sunset Cay on May 27. And he lists his
21 address in Newberry.

22 Now, I represented Charleston Harbor at that point
23 I had no idea about this agreement; did not represent
24 Sunset Cay until years later.

25 January 16 of 2009 the complaint's filed in small