

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James J. Corbett, Special Referee

Appellate Case No. 2014-001280

RECEIVED
DEC 11 2014
SC Court of Appeals

Glen K. LaConey, successor in interest of
Lynn G. Yacoubian,

Appellant,

v.

Xavier Troy Smith,

Respondent.

**RESPONDENT'S BRIEF IN OPPOSITION TO
MOTION FOR EXCLUSION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant Glen LaConey ("LaConey") has moved to exclude certain matters designated by Respondent for inclusion in the Record on Appeal. LaConey objects to certain materials as irrelevant and to others because he claims they were not filed with the Clerk of Court. This motion is wholly unfounded. Every item to which LaConey objects is both relevant and was filed with the Clerk of Court and/or presented to and accepted by the Special Referee.

I. Items 1-4

LaConey objects to the inclusion of the following items in the Record on Appeal:

1. Affidavit of Glen K. LaConey in support of supplementary proceedings, dated October 17, 2005;

2. Affidavit of Glen K. LaConey, filed January 30, 2006;
3. Appellant's motion for disqualification, filed June 3, 2011; and
4. Affidavit of Glen K. LaConey filed June 3, 2011.

LaConey claims these materials are irrelevant because they were filed as a part of a matter unrelated to the appeal and to which Respondent was not a party.

LaConey's arguments fails. The filings by LaConey were made in the course of these supplemental proceedings. He now objects to filings which bear the same case number and judgment roll number as the Orders which LaConey has appealed. They are relevant because they contain admissions by LaConey which bear on an issue central to this appeal – the identity of the party against whom the judgment LaConey seeks to enforce was entered. LaConey previously represented that the purported assignment of judgment on which his current claim rests was not an assignment of a judgment against Respondent, but against a limited liability company, Home Assist Real Estate, LLC.

The materials were also presented to and relied upon by the Special Referee. The Special Referee found as fact that these admissions had been made. (Order Dismissing Supplemental Proceedings at p. 3). These findings support the Special Referee's conclusion that the wrong judgment may have been assigned. *Id* at p.13.

They are properly part of the Record on Appeal.

II. Items 5-8

LaConey objects to the following items on the ground that they were not filed with the Clerk of Court:

5. Respondent's Motion for Relief from Judgment (including exhibits), dated September 3, 2013;

6. Respondent's Motion to Dismiss and/or Stay Supplemental Proceedings (including exhibits), dated September 3, 2013;

7. Affidavit of Xavier Smith dated September 3, 2013; and

8. Supplemental Affidavit of Xavier Smith, dated September 26, 2013.

Again, LaConey's contentions are completely unfounded. All of these materials were in fact either filed with the Clerk of Court or submitted directly to and accepted by the Special Referee. Attached to this Brief as Exhibit A is a print out of the actions taken in this matter obtained from a case records search on the South Carolina Judicial Department website. As the court records show:

- Respondent's Motion for Relief from Judgment was filed with the Clerk of Court on September 6, 2013;
- Respondent's Motion to Dismiss and/or Stay Supplemental Proceedings was also filed with the Clerk of Court on September 6, 2013;¹ and
- The first Affidavit of Xavier Smith was also filed on September 6, 2013.

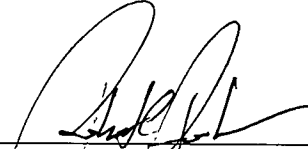
The sole remaining item to which LaConey objects is the Supplemental Affidavit of Xavier Smith dated September 26, 2013. This affidavit was submitted to the Special Referee on September 26, 2013. (Ex. B., letter of transmittal dated September 26, 2013). The Special Referee received and relied upon the Supplemental Affidavit – in fact, the Special Referee cited directly to the Supplemental Affidavit in the November 18, 2013 Order. (Order dated November 18, 2013 at p.2). As a result, the Supplemental Affidavit was presented to the lower court, and is appropriately part of the Record on Appeal pursuant to Rule 210, SCACR.

There is no basis whatsoever for LaConey's motion, and Respondent respectfully

¹ The argument that the very motions on which the Special Referee ruled and are now before the Court on appeal are not properly included in the Record on Appeal is absurd

requests that the motion be denied in its entirety.

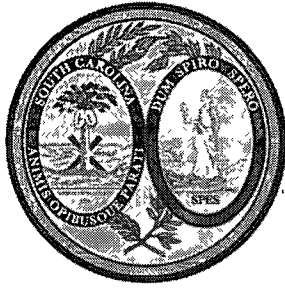
Respectfully submitted,



Robert L. Reibold
WALKER | REIBOLD
Post Office Box 61140
Columbia, SC 29260
(803) 454-0955

ATTORNEYS FOR RESPONDENT
XAVIER SMITH

December 9, 2014



Richland County 5th Judicial Circuit Public Index

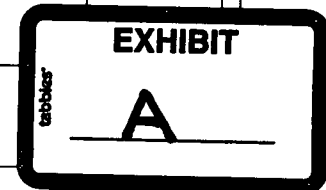


[Richland County Home Page](#) |
 [Online Payments](#) |
 [Public Index](#) |
 [City of Columbia Municipal Ct](#) |
 [S C Judicial Department](#) |
 [Summary Ct Dockets](#)

[REDACTED]

Lynn Yacoubian , plaintiff, et al vs Xavier Troy Smith , defendant, et al					
Case Number:	03CP4004186	Court Agency:	Richland County Common Pleas	Filed Date:	08/28/2003
Case Type:	Common Pleas	Case Sub Type:	Unfair Trade Pra 640	File Type:	Non-Jury
Status:	Appeal	Assigned Judge:			
Disposition:	Judgment	Disposition Date:	02/28/2005	Disposition Judge:	Cooper, G. Thomas Jr.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
LaConey, Glen K	Filing/Notice of Appeal	Filing		06/16/2014-11:30		
Smith, Xavier Troy	Brief in Opposition to Petitioners Motion to Reconsider	Filing		05/30/2014-10:48		
Yacoubian, Lynn	Order Dismissing The Supplemental Proceeding/James J. Corbet	Order		05/08/2014-10:04		
Owen, Paul Winford Jr.	Notice of Motions Roster Publication Sent	Action		04/21/2014-11:12		
Reibold, Robert Lawrence	Notice of Motions Roster Publication Sent	Action		04/21/2014-11:12		
Yacoubian, Lynn	Petitioner's Discovery Status Report/Glen K. LaConey	Filing		03/13/2014-10:45		
Yacoubian, Lynn	Petitioner's First Set of Requests For Admissions to Respond	Filing		03/13/2014-10:42		
Yacoubian, Lynn	Petitioner's Discovery Status Report/Glen K. LaConey	Filing		03/13/2014-10:42		
Yacoubian, Lynn	Motion/Motion Filing Fee	Filing		03/04/2014-16:17		
Smith, Xavier Troy	Supplemental Motion to Dismiss	Motion		03/04/2014-14:26	04/28/2014-14:26	



Yacoubian, Lynn	Order on Motion To Dismiss and/or Stay Supplemental Proceedi	Order		11/18/2013-16:16	
Owen, Paul Winford Jr.	Notice of Motions Roster Publication Sent	Action		10/04/2013-09:49	
Owen, Paul Winford Jr.	Notice of Motions Roster Publication Sent	Action		10/04/2013-09:49	
Reibold, Robert Lawrence	Notice of Motions Roster Publication Sent	Action		10/04/2013-09:49	
Reibold, Robert Lawrence	Notice of Motions Roster Publication Sent	Action		10/04/2013-09:49	
Yacoubian, Lynn	Motion/Motion Filing Fee	Filing		09/06/2013-16:04	
Yacoubian, Lynn	Motion/Motion Filing Fee	Filing		09/06/2013-16:04	
Smith, Xavier Troy	Affidavit of Xavier Smith	Filing		09/06/2013-11:31	
Smith, Xavier Troy	Motion For Relief From Default Judgment	Motion		09/06/2013-11:31	09/06/2013-11:31
Smith, Xavier Troy	Motion to Dismiss and/or Stay Supplemental Proceedings	Motion		09/06/2013-11:27	09/06/2013-11:27
Yacoubian, Lynn	Notice of Motion and Motion For Disqualification of Judge St	Motion		06/03/2011-14:47	06/03/2011-14:47
Yacoubian, Lynn	Affidavit of Glen K. LaConey	Filing		06/03/2011-09:01	
Yacoubian, Lynn	Certificate of Mailing	Filing		06/03/2011-09:00	
Yacoubian, Lynn	ORDER OF JUDGMENT /J COOPER	Order		02/28/2005-00:00	
Yacoubian, Lynn	FORM ORDER DEFAULT JUDGMENT GRANTED, FORMAL ORDER TO FOLLOW	Order		01/18/2005-00:00	
Yacoubian, Lynn	MOTION FOR DEFAULT JUDGMENT	Event		01/14/2005-10:30	01/18/2005-10:31
Yacoubian, Lynn	MOTION NOTICE MAILED	Event		01/06/2005-00:00	
Yacoubian, Lynn	REQUEST FOR HEARING	Motion		02/09/2004-00:00	02/28/2005-00:00
Yacoubian, Lynn	AFFIDAVIT OF DEFAULT OF XAVIER TROY SMITH	Filing		10/20/2003-00:00	
Yacoubian, Lynn	AFFIDAVIT OF DEFAULT OF HOME ASSIS REAL ESTATE LLC	Filing		10/17/2003-00:00	
Yacoubian, Lynn	AFFIDAVIT OF SERVICE ON XAVIER TROY SMITH	Filing		09/16/2003-00:00	
Yacoubian, Lynn	AFFIDAVIT OF SERVICE ON XAVIER TROY SMITH	Filing		09/12/2003-00:00	
Yacoubian, Lynn	CASE FILED	Filing		08/28/2003-00:00	

Yacoubian, Lynn	SUMMONS AND COMPLAINT	Filing	08/28/2003-00:00		
----------------------------	----------------------------------	---------------	-------------------------	--	--

CMSWeb 6.1
© 2011 South Carolina Judicial Department • All rights reserved

WALKER || REIBOLD
ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Robert L. Reibold

(803)454-0955
Fax (803)454-0956
rreibold@walkerreibold.net

September 26, 2013

Via Hand Delivery

The Honorable James J. Corbett
Special Referee
Holler, Garner, Corbett, Ormond, Plante & Dunn
1777 Bull St.
Columbia, SC 29201

Re: LaConey v. Xavier Smith, Supplemental Proceedings

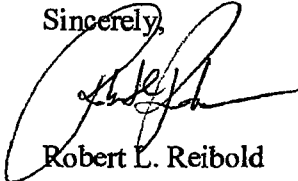
Dear Special Referee Corbett:

Enclosed please find the following submissions in connection with the above-referenced matter:

- (1) a proposed order on Respondent's motion to set aside the default judgment;
- (2) a proposed order on Respondent's motion to dismiss; and
- (3) a supplemental affidavit of Xavier Smith, which contains the information you asked us to obtain regarding what notice if any was given to Respondent regarding the hearing on the original motion for default judgment.

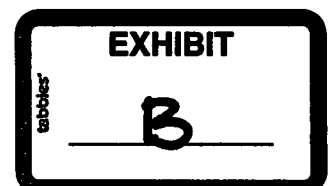
I look forward to your ruling.

Sincerely,



Robert L. Reibold

RLR:wr
Encl.
cc w/encl: Glen LaConey (via regular mail)



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James J. Corbett, Special Referee

Appellate Case No. 2014-001280

Glen K. LaConey, successor in interest of
Lynn G. Yacoubian,

Appellant,

v.

Xavier Troy Smith,

Respondent.

PROOF OF SERVICE

I hereby certify that I have served Respondent's Brief in Opposition to Motion for Exclusion of Matter to be Included in the Record on Appeal on December 9, 2014, addressed to the Pro Se Appellant at the following:

Glen K. LaConey
9401 Wilson Boulevard - #68
Columbia, SC 29203

RECEIVED

DEC 11 2014

SC Court of Appeals

Cesaire Chase

Cesaire N. Chase – Legal Assistant
WALKER & REIBOLD, LLC
Post Office Box 61140
Columbia, South Carolina 29260
(803) 454-0955

WALKER || REIBOLD

ATTORNEYS AT LAW

3321 Forest Drive Suite One, PO Box 61140 Columbia, SC 29260

Cesaire N Chase

(803)454-0955
Fax (803)454-0956
cchase@walkerreibold.net
Reply to Columbia Office

December 9, 2014

The Honorable Jenny Abbott Kitchings
Clerk – SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Appellate Case No.: 2014-001280
Glen K. LaConey, successor in Interest of Lynn G. Yacoubian v. Xavier T. Smith
Civil Action No.: 2003-CP-40-4186
Judgment Roll No.: 258732

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent Xavier T. Smith's Brief in Opposition to Motion for Exclusion of Matter to be Included in the Record on Appeal and Proof of Service for filing in connection with the above-referenced matter. Please time-stamp one of the copies and return same in the self-addressed stamped envelope provided.

Thank you for your assistance with this matter.

Sincerely,



Cesaire N. Chase
Legal Assistant

:cnc

Enclosures

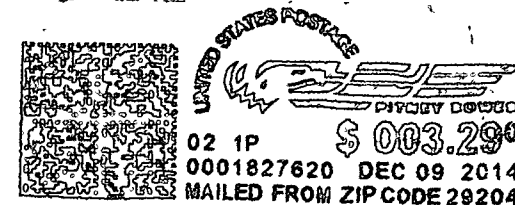
cc: Glen K. LaConey

RECEIVED

DEC 11 2014

SC Court of Appeals

Columbia, SC 29260



RECEIVED
DEC 11 2014
SC Court of Appeals

**The Honorable Jenny Abbott Kitchings
Clerk – SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201**