

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

SC Court of Appeals

MAR 31 2015

RECEIVED

APPEAL FROM ANDERSON COUNTY  
Alexander S. Macaulay, Circuit Court Judge

Case No. 2013-CP-04-2409

Hubert Bethune, ..... Respondent,

v.

Waffle House, Inc., ..... Appellant.

**RECORD ON APPEAL**

Andrew F. Lindemann  
DAVIDSON & LINDEMANN, P.A.  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Appellant*

Rodney M. Brown  
RODNEY M. BROWN, P.A.  
210 South Main Street  
Fountain Inn, South Carolina 29644  
(864) 862-2528

*Counsel for Respondent*

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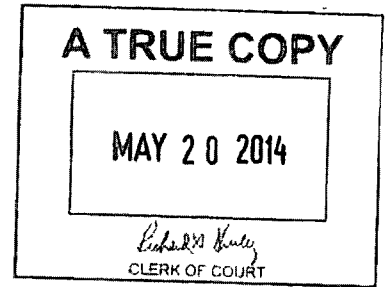
Certificate of Counsel ..... 59  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
 )  
Hubert Bethune, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Waffle House, Inc., )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS

2013-CP-04-2409

ORDER



---

PRESIDING JUDGE: The Honorable Alexander S. Macaulay  
ATTORNEY FOR PLAINTIFF: Rodney M. Brown  
ATTORNEY FOR DEFENDANT: Andrew F. Lindemann  
DATE OF HEARING: April 15, 2014  
COURT REPORTER: Diane Thommes

---

This matter comes before the Court on an appeal of a Magistrate Court decision dismissing the action. The background in this case is important for the Court to understand where the Magistrate was in rendering its decision.

Based upon the information provided, the Court makes the following findings and conclusions:

1. In February 2012, the Plaintiff, Hubert Bethune, filed a Civil Complaint in Magistrate Court in Anderson County claiming he was injured from a broken plate while eating at Waffle House in Anderson County.

2. The Plaintiff subsequently sought a Motion to transfer to Common Pleas Court when he determined that his damages, in his opinion, exceed the jurisdictional limits of \$7,500.00.

  
Page 1 of 3

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ANDERSON SC  
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COMM. PLEAS AND  
GENERAL SESSIONS

3. The matter was scheduled for a hearing on a number of occasions and was continued due to conflicts of both the Plaintiff's and Defendant's attorney.

4. The Plaintiff/Respondent then filed a separate action in Common Pleas Court on July 16, 2013. That personal injury action, 2013-CP-04-1658, is presently pending in the Anderson County Court of Common Pleas.

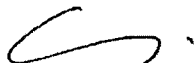
5. The Magistrate Court scheduled a hearing on the Plaintiff's motion to transfer to Common Pleas Court. The Court was informed by Plaintiff's attorney that the issue was moot since a separate action had been filed in Common Pleas Court.

6. The Court, sua sponte, dismissed the action since there existed an identical action pending in Common Pleas Court, which is where the Plaintiff believed jurisdiction was proper.

7. The Defendant subsequently requested a hearing on the motion to dismiss. The parties appeared at a hearing scheduled by the Magistrate and the Defendant raised the same arguments that it did in this appeal, including legal prejudice and failure to file a motion to dismiss, asserting that the case pending in Magistrate Court was improperly dismissed.

8. Where there were two identical actions pending in different Courts, only one of which could dispose of the entire matter while the other has limited jurisdiction, the Magistrate, ex mero motu, dismissed the action pursuant to their duty and authority to control the docket in their Court.

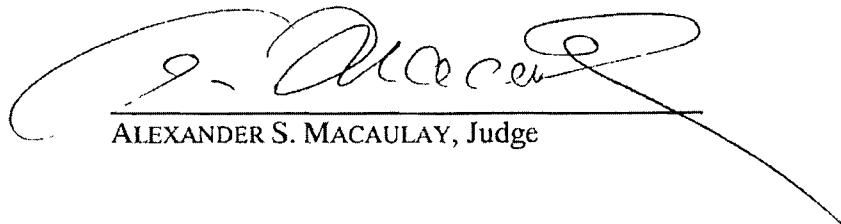
9. The Defendant/Appellant, Waffle House, subsequently appealed this to the Anderson County Court of Common Pleas.



The issue presented to this Court is whether the Magistrate appropriately dismissed the case. The Court understands that there were two cases pending at the time the Magistrate dismissed the action pending in Magistrate Court. The Magistrate Court also dismissed the other arguments raised by the Defendant/Appellant as non-meritorious and determined the dismissal was appropriate.

This Court finds that Defendant has suffered no legal prejudice inasmuch as they have the right to present any and all evidence to determine liability and damages, as would have been the case in Magistrate Court or the Court of Common Pleas. This Court further finds that the Magistrate Court did take the proper action in dismissing the case pending in Magistrate Court and denies the Defendant's request to overturn the dismissal ordered by the Magistrate. *Cf. Crestwood Golf Club, Inc v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997).

IT IS SO ORDERED.




ALEXANDER S. MACAULAY, Judge

May 15, 2014  
Walhalla, South Carolina

FILED CLERK'S OFFICE  
ANDERSON, SC  
MAY 16 PM 2 45  
COMM. PLEAS AND  
GENERAL SESSIONS

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS  


Herbert Bethune )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
Waffle House, Inc., )  
 )  
Defendant. )

CASE NO.: 2013-CP-04-2409

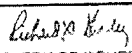
ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION

GENERAL SESSION  
AUG 20 2014  
CLERK OF COURT

After careful consideration of the entire record and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

"Magistrates have concurrent civil jurisdiction . . . in actions for damages for injury . . . to the person, if the damages claimed do not exceed seven thousand five hundred dollars." S.C. Code Ann. § 22-3-10 (2) (Supp. 2013). Where the actual value of the damages claimed exceed its jurisdictional amount, the magistrate's court is without jurisdiction to try the case. *Story v Nicpee*, 105 S.C. 265, 89 S.E. 666 (1916) (judgment within the jurisdictional amount reversed and the proceedings dismissed, where the plaintiff's testimony fixed the value of the amount claimed in excess of the magistrate's jurisdictional amount). A court's power to hear and decide cases carries with it the inherent power to control the order of business. *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012), citing, *William's v. Bordon's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980).

The appellate court must always take notice of the lack of subject matter jurisdiction. *Amisub of S.C., Inc v. Passmore*, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994). The lack of subject matter jurisdiction can be raised at any time, can

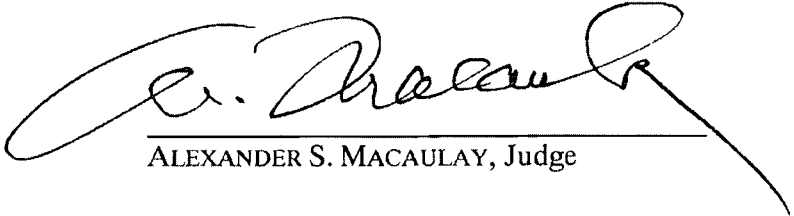
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AUG 20 2014  
  
CLERK OF COURT

be raised for the first time on appeal, and can be raised sua sponte by the court. See e.g., *Lake v. Reeder Constr Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct.App.1998) (holding issues related to subject matter jurisdiction may be raised at any time). "The acts of a court with respect to a matter as to which it has no jurisdiction are void." *State v. Guthrie*, 352 S.C. 103, 107, 572 S.E.2d 309, 311-12 (Ct.App.2002).

*Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 634 S.E.2d 59 (Ct.App.2006).

Accordingly, the Defendant's Motion, pursuant to Rule 59(e), SCRPC,<sup>1</sup> is DENIED.

AND, IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Anderson, South Carolina  
August 11, 2014

SHAWNEE COUNTY  
GENERAL SESSIONS  
AUG 11 2014  
10:10 AM  
CLERK OF COURT

<sup>1</sup> The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRPC

**A TRUE COPY**  
**AUG 20 2014**  
*Rufus M. Kirtley*  
CLERK OF COURT





STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
 )  
 )  
 )

2012CV0410100585  
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

Hubert Bethune  
387 Durbin Farms Rd  
Gray Court, SC 29645

SUMMARY COURT

PLAINTIFF(S)

FEB 16 2012

Vs

PM 2:56:25

Waffle House, Inc  
2 Justice Lane  
Anderson, SC 29621

DEFENDANT(S)


**TO THE DEFENDANT(S) NAMED ABOVE:**

**YOU ARE SUMMONED** and required to Answer the allegations and present any appropriate Counterclaims/Crossclaims to the attached Complaint/Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

Anderson County  
Anderson Summary Court  
2404 N. Main Street  
Anderson, SC 29621  
Phone: (864) 260-4156 Fax: (864) 260-4144

If you fail to Answer within the prescribed time, a Judgment by Default will be rendered against you for the amount or other remedy requested in the attached Complaint, plus interest and costs. **If you desire a jury trial, you must request one within five (5) days before the date of trial.** If no jury trial is timely requested, the matter will be heard and decided by the Judge.

Given under my hand:

  
\_\_\_\_\_  
JUDGE

**READ ATTACHED INSTRUCTIONS CAREFULLY**

February 16, 2012

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF ANDERSON	)	
	)	
Hubert Bethune	)	
387 Durbin Farms Road	)	
Gray Court, SC 29645	)	
(864) 444-9488	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(Jury Demand)
Waffle House, Inc.	)	
2 Justice Lane	)	
Anderson, SC 29621	)	
(864) 222-3834	)	
	)	
Defendant.	)	
	)	

The Plaintiff would allege unto this Court as follows:

1. The Plaintiff is a citizen and resident of Laurens County, South Carolina.
2. The Defendant owns Waffle Houses all over South Carolina including the one located on Justice Lane in Anderson, South Carolina.
3. On August 9, 2011, the Plaintiff was an invitee and customer at the store in question.
4. While he was eating food prepared by the Defendant, the Plaintiff ended up chewing on broken glass from a broken plate that was in his food.
5. The accident caused the Plaintiff injury.
6. The Defendant was negligent, grossly negligent, willful or wanton in one or more of the following particulars:
  - a. Allowing glass to be in the Plaintiff's plate of food;

b. Failure to have proper procedures to prevent broken glasses or plates, etc. to be in a location where food is prepared;

c. Failure to have proper procedures to prevent broken glass, plates, etc. from getting in food served to customers;

d. Failure to have proper procedures to keep glasses and plates from being broken;

e. Failure to properly store glasses and plates;

f. Failure to properly inspect food before it is served;

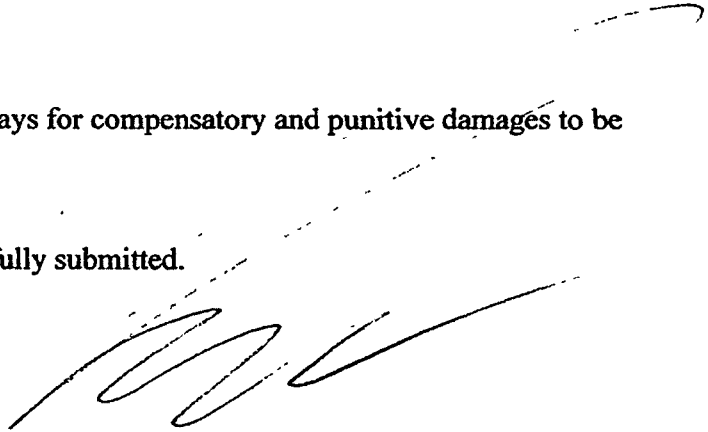
g. Failure to properly inspect food while it is being cooked;

all in violation of the statutory and common laws of the State of South Carolina.

7. As a direct and proximate result of the negligence, gross negligence, willfulness or wantonness of the Defendant, the Defendant's actions caused the Plaintiff's injuries and the Plaintiff requests compensatory and punitive damages in an amount to be determined by a jury as just and fair.

WHEREFORE, the Plaintiff prays for compensatory and punitive damages to be awarded to him.

Respectfully submitted.



---

Rodney M. Brown, S.C. Bar #000953  
Attorney for Plaintiff  
Younts, Alford, Brown & Goodson  
Post Office Box 549-210 S. Main Street  
Fountain Inn, SC 29644  
(864) 862-2528

February 13, 2012

**JURY DEMAND**

**The Plaintiff hereby demands a trial by jury.**



---

Rodney M. Brown

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE MAGISTRATE'S COURT.

Hubert Bethune, )  
 )  
Plaintiff, )  
 )  
v )  
 )  
Waffle House, Inc., )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No 2012CV0410100585 SUMMARY COURT

MAR 27 '12

ANSWER  
(Jury Trial Requested)

PM1:08:34

The Defendant Waffle House, Inc. answers the Plaintiff's Complaint herein as follows:

1 The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.

2. As to the allegations set forth in Paragraph 1 of the Plaintiff's Complaint, the Defendant lacks sufficient information to determine whether the Plaintiff is a resident and citizen of Laurens County and, therefore, denies those allegations at this time.

3 As to the allegations set forth in Paragraph 2 of the Plaintiff's Complaint, the Defendant admits that Waffle House, Inc is a Georgia corporation and that it operates restaurants in South Carolina including one located on Justice Lane in Anderson, South Carolina

4 As to the allegations set forth in Paragraphs 3, 4, and 5 of the Plaintiff's Complaint, the Defendant lacks sufficient information to ascertain the truth of these allegations and, therefore, denies these allegations at this time

5. The allegations set forth in Paragraphs 6 and 7 of the Plaintiff's Complaint are denied.

6 The Defendant denies all allegations and relief contained in the Prayer for Relief.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant Waffle House, Inc. pray that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

DAVIDSON & LINDEMANN, P.A

BY: 

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Defendant Waffle House, Inc*

Columbia, South Carolina

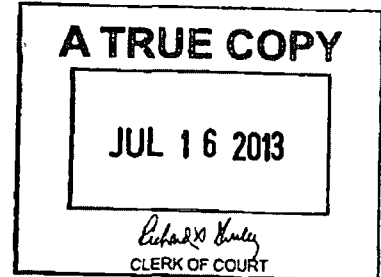
March 23, 2012

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
 )  
Hubert Bethune, )  
 )  
Plaintiff, )  
 )  
Vs )  
 )  
Waffle House, Inc , )  
 )  
Defendant )  
 )  
\_\_\_\_\_ )

IN THE COMMON PLEAS COURT

2013- CP - 04 - 01658

COMPLAINT  
(Jury Demand)



The Plaintiff would allege unto this Court as follows

- 1 The Plaintiff is a citizen and resident of Laurens County, South Carolina
- 2 The Defendant owns Waffle Houses all over South Carolina including the one located on Justice Lane in Anderson, South Carolina
- 3 On August 9, 2011, the Plaintiff was an invitee and customer at the store in question
- 4 While he was eating food prepared by the Defendant, the Plaintiff ended up ~~chewing on broken glass from a broken plate that was in his food~~
- 5 The accident caused the Plaintiff injury
- 6 The Defendant was negligent, grossly negligent, willful or wanton in one or more of the following particulars
  - a Allowing glass to be in the Plaintiff's plate of food,
  - b Failure to have proper procedures to prevent broken glasses or plates, etc to be in a location where food is prepared;
  - c Failure to have proper procedures to prevent broken glass, plates, etc. from getting in food served to customers,

d Failure to have proper procedures to keep glasses and plates from being broken,

e Failure to properly store glasses and plates,

f Failure to properly inspect food before it is served,

g Failure to properly inspect food while it is being cooked,

h Failure to properly and appropriately clean up the broken plate;

i Failure to check the surrounding food from where the plate was broken to see if any of the broken pieces had fallen into it,

all in violation of the statutory and common laws of the State of South Carolina

7. As a direct and proximate result of the negligence, gross negligence, willfulness or wantonness of the Defendant, the Defendant's actions cause the Plaintiff's injuries and the Plaintiff requests compensatory and punitive damages in an amount to be determined by a jury as just and fair

WHEREFORE, the Plaintiff prays for compensatory and punitive damages to be awarded to him.

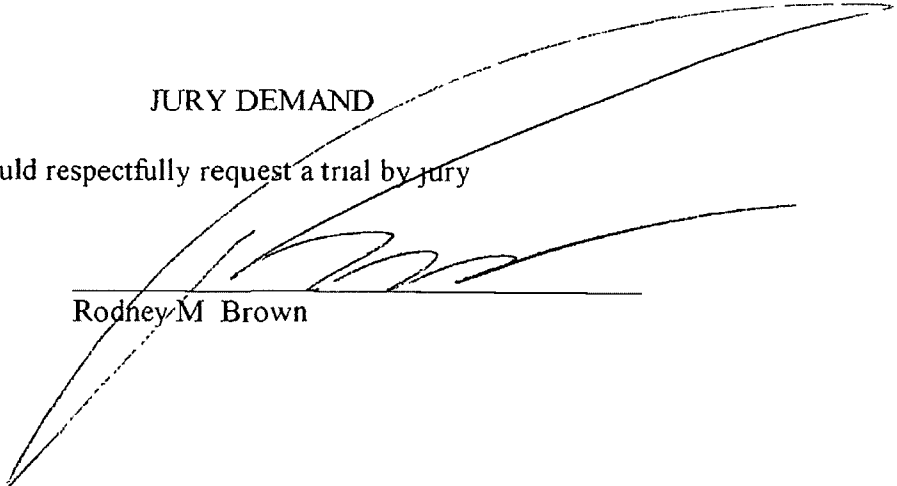
Respectfully submitted

Rodney M. Brown, S C Bar #000953  
Attorney for Plaintiff  
210 S. Main Street  
Fountain Inn, SC 29644  
(864) 862-2528

July 10, 2013

JURY DEMAND

The Plaintiff would respectfully request a trial by jury



---

Rodney M Brown

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

Hubert Bethune, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Waffle House, Inc , )  
 )  
Defendant )  
\_\_\_\_\_ )

Civil Action No. 2013-CP-04-1658

**ANSWER**  
**(Jury Trial Requested)**

The Defendant Waffle House, Inc answers the Plaintiff's Complaint herein as follows

**FOR A FIRST DEFENSE**

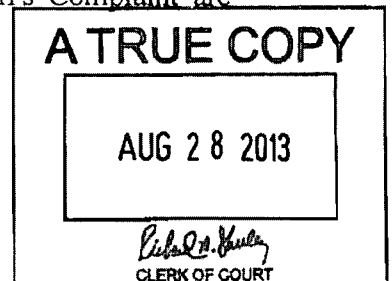
1 The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained

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3 As to the allegations set forth in Paragraph 2 of the Plaintiff's Complaint, the Defendant admits that Waffle House, Inc is a Georgia corporation and that it operates restaurants in South Carolina including one located on Justice Lane in Anderson, South Carolina.

4. As to the allegations set forth in Paragraphs 3, 4, and 5 of the Plaintiff's Complaint, the Defendant lacks sufficient information to ascertain the truth of these allegations and, therefore, denies these allegations at this time.

5 The allegations set forth in Paragraphs 6 and 7 of the Plaintiff's Complaint are denied



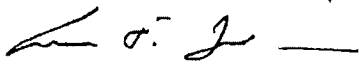
6 The Defendant denies all allegations and relief contained in the Prayer for Relief

**FOR A SECOND DEFENSE**

7 There is presently pending another action in Magistrate's Court between the same parties with the identical allegations. The Defendant reserves its right to file a motion pursuant to Rule 12(b)(8), SCRPC.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant Waffle House, Inc. prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper

DAVIDSON & LINDEMANN, P.A.

BY 

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Defendant Waffle House, Inc*

Columbia, South Carolina

August 23, 2013

MOTION FEE PAID

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

Hubert Bethune, )  
 )  
Plaintiff, )

Civil Action No 2013-CP-04-1658

v )

NOTICE OF MOTION  
AND MOTION TO DISMISS

Waffle House, Inc., )  
 )  
Defendant )


TO: RODNEY M BROWN, ESQUIRE, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant Waffle House, Inc. will move before the Presiding Judge of the Tenth Judicial Circuit at the Anderson County Courthouse, Anderson, South Carolina, at such time and place as may be set by the Court, for an Order, pursuant to Rule 12(b)(8), SCRCPP, dismissing the Plaintiff's Complaint because another action is pending in the Anderson County Magistrate's Court between the same parties making the identical factual allegations and asserting the same cause of action.

The Defendant's motion is based upon the pleadings filed in this case; the Complaint filed in the Anderson County Magistrate's Court, Case Number 2012CV0410100585 (attached), the rules of court, and such other matters as may be properly presented to the Court at the time of the hearing

A TRUE COPY  
AUG 28 2013  
*Richard A. Huber*  
CLERK OF COURT

DAVIDSON & LINDEMANN, P A.

BY:   
\_\_\_\_\_

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Defendant Waffle House, Inc*

Columbia, South Carolina

August 23, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
 )  
 )  
 )

2012CV0410100585  
CIVIL CASE NUMBER  
IN THE MAGISTRATE'S COURT  
SUMMONS

Hubert Bethune  
387 Durbin Farms Rd  
Gray Court, SC 29645

SUMMARY COURT

PLAINTIFF(S)

FEB 16 2012

Vs

PM 2:50:25

Waffle House, Inc  
2 Justice Lane  
Anderson, SC 29621

DEFENDANT(S)

**TO THE DEFENDANT(S) NAMED ABOVE:**

**YOU ARE SUMMONED** and required to Answer the allegations and present any appropriate Counterclaims/Crossclaims to the attached Complaint/Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

Anderson County  
Anderson Summary Court  
2404 N. Main Street  
Anderson, SC 29621  
Phone: (864) 260-4156 Fax: (864) 260-4144

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Given under my hand:

  
\_\_\_\_\_  
JUDGE

**READ ATTACHED INSTRUCTIONS CAREFULLY**

February 16, 2012

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF ANDERSON	)	
	)	
Hubert Bethune	)	
387 Durbin Farms Road	)	
Gray Court, SC 29645	)	
(864) 444-9488	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(Jury Demand)
Waffle House, Inc.	)	
2 Justice Lane	)	
Anderson, SC 29621	)	
(864) 222-3834	)	
	)	
Defendant.	)	
	)	

The Plaintiff would allege unto this Court as follows:

1. The Plaintiff is a citizen and resident of Laurens County, South Carolina.
2. The Defendant owns Waffle Houses all over South Carolina including the one located on Justice Lane in Anderson, South Carolina.
3. On August 9, 2011, the Plaintiff was an invitee and customer at the store in question.
4. While he was eating food prepared by the Defendant, the Plaintiff ended up chewing on broken glass from a broken plate that was in his food.
5. The accident caused the Plaintiff injury.
6. The Defendant was negligent, grossly negligent, willful or wanton in one or more of the following particulars:
  - a. Allowing glass to be in the Plaintiff's plate of food;

b. Failure to have proper procedures to prevent broken glasses or plates, etc. to be in a location where food is prepared;

c. Failure to have proper procedures to prevent broken glass, plates, etc. from getting in food served to customers;

d. Failure to have proper procedures to keep glasses and plates from being broken;

e. Failure to properly store glasses and plates;

f. Failure to properly inspect food before it is served;

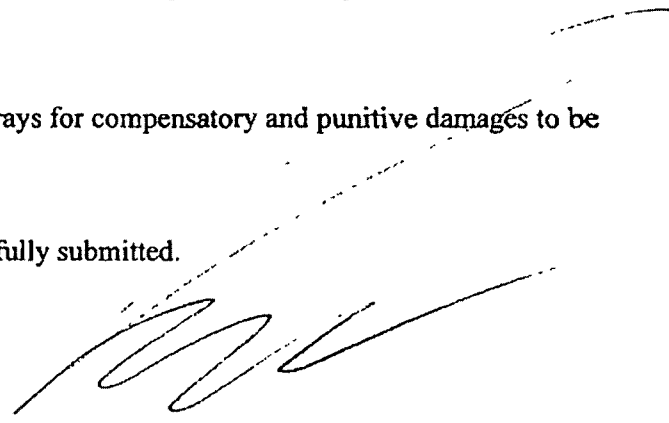
g. Failure to properly inspect food while it is being cooked;

all in violation of the statutory and common laws of the State of South Carolina.

7. As a direct and proximate result of the negligence, gross negligence, willfulness or wantonness of the Defendant, the Defendant's actions caused the Plaintiff's injuries and the Plaintiff requests compensatory and punitive damages in an amount to be determined by a jury as just and fair.

WHEREFORE, the Plaintiff prays for compensatory and punitive damages to be awarded to him.

Respectfully submitted.

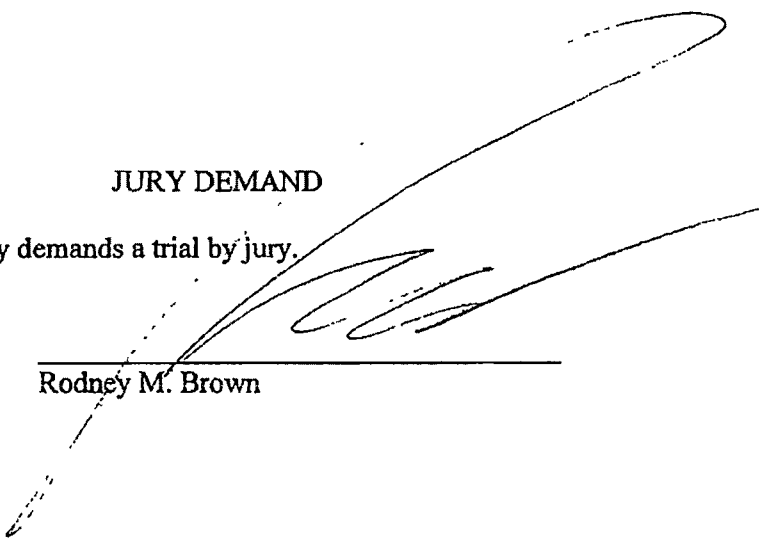


Rodney M. Brown, S.C. Bar #000953  
Attorney for Plaintiff  
Younts, Alford, Brown & Goodson  
Post Office Box 549-210 S. Main Street  
Fountain Inn, SC 29644  
(864) 862-2528

February 13, 2012

JURY DEMAND

The Plaintiff hereby demands a trial by jury.



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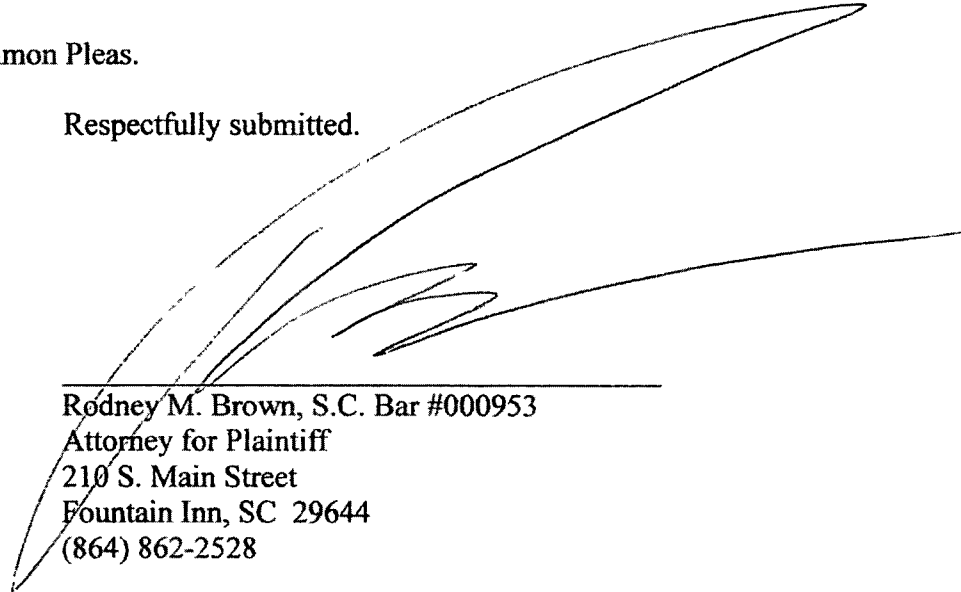
Rodney M. Brown

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	
COUNTY OF ANDERSON	)	2012CV0410100585
	)	
Hubert Bethune,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION
	)	
Waffle House, Inc.,	)	
	)	
Defendant.	)	
	)	

The Plaintiff requests that this matter be transferred to the Court of Common Pleas. The Plaintiff has determined that his damages exceed the jurisdictional amount of Seven Thousand Five Hundred Dollars (\$7,500.00) for Magistrate's Court and requests that this be transferred to the Court of Common Pleas.

Accordingly, the Plaintiff requests that the Court grant its motion and transfer this case to the Court of Common Pleas.

Respectfully submitted.




---

Rodney M. Brown, S.C. Bar #000953  
Attorney for Plaintiff  
210 S. Main Street  
Fountain Inn, SC 29644  
(864) 862-2528

May 21, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE MAGISTRATE'S COURT

Hubert Bethune, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Waffle House, Inc., )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No. 2012CV0410100585 **SUMMARY COURT**

**SEP 11, '13**

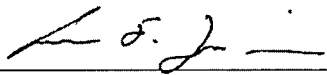
**OBJECTION TO PROPOSED  
ORDER OF DISMISSAL**

**AM 11:26:25**

Without first obtaining the consent of the Defendant Waffle House, counsel for the Plaintiff Hubert Bethune has submitted a proposed Order of Dismissal to the Court which dismisses this action without prejudice. The Plaintiff has submitted this proposed Order of Dismissal without complying with Rule 7(b), SCRCPP, or Rule 41(a), SCRCPP. The Plaintiff has submitted the proposed Order of Dismissal without first filing a motion seeking that relief. Rule 7(b) provides that "[a]n application to the court for an order shall be by motion which . . . shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Rule 7(b), SCRCPP. The Plaintiff has failed to file any written motion seeking the voluntary dismissal of this action. Further, the Plaintiff did not submit the Order of Dismissal as a consent order.

The Court is hereby advised that the Defendant Waffle House objects to and opposes the proposed Order of Dismissal. The Defendant opposes the dismissal of this action without prejudice. The Defendant shall only agree to the dismissal if the dismissal is specifically with prejudice.

DAVIDSON & LINDEMANN, P.A.

BY:  \_\_\_\_\_

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Defendant Waffle House, Inc*

Columbia, South Carolina

September 8, 2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

Hubert Bethune, )  
 )  
Plaintiff-Respondent, )  
 )  
v. )  
 )  
Waffle House, Inc , )  
 )  
Defendant-Appellant )  
\_\_\_\_\_ )

Civil Action No \_\_\_\_\_

NOTICE OF APPEAL  
FROM MAGISTRATE'S COURT

SUMMARY COURT

NOV 4 '13  
PM 1:30:46

The Defendant-Appellant Waffle House, Inc. hereby appeals from the Amended Order of Dismissal issued by Magistrate Judge James Busby in the case of *Bethune v Waffle House, Inc* , Civil Action No 2012CV0410100585, which was issued on October 3, 2013. Counsel for the Defendant-Appellant received written notice of the Amended Order of Dismissal on October 3, 2013 This appeal to the Court of Common Pleas is filed in accordance with S C. Code Ann. §§ 18-7-20 and 18-7-30 A copy of the Amended Order of Dismissal is attached hereto.

The grounds for this appeal are as follows

1. The Plaintiff-Respondent never filed a motion to dismiss the action and thus failed to comply with Rule 7(b), SCRPC, or Rule 41(a), SCRPC. Rule 7(b) provides that "[a]n application to the court for an order shall be by motion which . . . shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Rule 7(b), SCRPC. The Plaintiff-Respondent failed to file any written motion seeking the voluntary dismissal of this action. In addition, the Plaintiff-Respondent failed to file any affidavits or other evidentiary support for the voluntary dismissal that he sought

2. The Magistrate's Court also committed an error of law and, alternatively an abuse of discretion, in dismissing the action in Magistrate's Court given the legal prejudice demonstrated by the Defendant-Appellant. In particular, the Defendant-Appellant showed that the Plaintiff-Respondent made the conscious choice to file and litigate this action in the Magistrate's Court. The Complaint was filed in Magistrate's Court on February 16, 2012. The case was ready for trial but was continued on several occasions because of scheduling conflicts. Then, in July 2013, some 17 months after the filing of this action, the Plaintiff-Respondent filed a Complaint in the Court of Common Pleas. See, *Bethune v Waffle House, Inc*, Civil Action No. 2013-CP-04-1658. The Complaint filed in the Court of Common Pleas is *word-for-word identical* to the Complaint filed in Magistrate's Court. As a result of the dismissal of the Magistrate's Court action and allowing the action to be re-filed in Circuit Court some 17 months after its original commencement, the Defendant-Appellant is faced with an unnecessary delay in obtaining resolution of the action in contravention of Rule 1, SCRC. In addition, by allowing the action to be dismissed in Magistrate's Court and re-filed in Circuit Court, the Defendant-Appellant is now subject to the cost and expense of discovery which is otherwise not authorized in Magistrate's Court. Finally, and most importantly, with the dismissal of the action in Magistrate's Court, the Defendant-Appellant is denied the monetary cap on damages that is established by statute for cases commenced in Magistrate's Court. The Plaintiff-Respondent originally chose to bring the suit in Magistrate's Court which set a cap on his recovery at \$7,500. That was a choice which the Plaintiff-Respondent deliberately made. The Defendant-Appellant is subjected to legal prejudice by the loss of that cap on liability resulting from the dismissal in Magistrate's Court. In Circuit Court, the Defendant-Appellant will now be subjected to unlimited and unqualified liability, and that constitutes clear legal prejudice that should have resulted in the denial of the voluntary dismissal.

WHEREFORE, the Defendant-Appellant Waffle House, Inc prays that this Court reverse the Amended Order of Dismissal and order that this action proceed in the Magistrate's Court.

DAVIDSON & LINDEMANN, P A

BY: 

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Defendant-Appellant  
Waffle House, Inc*

Columbia, South Carolina

October 31, 2012



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

)  
)  
)  
)  
)

2012CV0410100585  
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT  
RETURN OF THE CIVIL APPEAL



Hubert Bethune  
387 Durbin Farms Rd  
Gray Court, SC 29645  
-

PLAINTIFF(S)

Vs

Waffle House, Inc  
2 Justice Lane  
Anderson, SC 29621

DEFENDANT(S)

The attached documents comprise the case file of the Anderson Summary Court. As required by Section 18-7-60, SC Code of Laws, this file is transmitted to the Court of Common Pleas as the result of an appeal. The following documents are attached:

- Summons, Complaint and Proof of Service
- Pretrial Motions and Orders granting or denying
- Jury Strike Proceedings (if applicable)
- Trial proceedings, summary of trial
- Instructions given to jury or denied
- Order of Judgment signed by the Trial Judge
- Post-trial Motions and Orders granting or denying
- All papers and notices of hearings and trial
- Notice of Appeal and date filed with the Court
- Other (describe):

  
JUDGE/CLERK

Anderson Summary Court  
2404 N. Main Street  
Anderson, SC 29621  
Phone: (864) 260-4156 Fax: (864) 260-4144

December 4, 2013

FILED CLERK'S OFFICE  
ANDERSON SC  
2013 DEC 4 PM 4 45  
COMMON PLEAS AND  
GENERAL SESSIONS



**FILED CLERK'S OFFICE  
ANDERSON SC**

December 2, 2013

Case Number 2012-0585

Hubert Bethune  
Plaintiff

Rodney M. Brown, Attorney for Plaintiff

Waffle House, Inc.  
Defendant

Andrew F. Lindemann, Attorney for Defendant

**2013 DEC 4 PM 4 45  
COMMON PLEAS AND  
GENERAL SESSIONS**

In answer to defendant's appeal on Case Number 2012-0585, the court files the following return.

- 2-16-12 Complaint filed in Magistrate's Court by Rodney Brown for Hubert Bethune, Jury Trial Demanded
- 2-24-12 Magistrate Court received the Affidavit of Service for service of the S&C on the Registered Agent for Waffle House by certified mail
- 3-27-12 Answer to S&C clocked in at Summary Court
- 5-09-12 Pretrial Hearing, no settlement accomplished
- 3-19-13 Both attorneys notified of jury strike on April 15, 2013, plaintiff's attorney has conflict, continued for new date
- 5-22-13 Summary Court receives Plaintiff's Motion to transfer the case to Common Pleas Court
- 5-28-13 Both attorneys notified of Motion Hearing on June 25, 2013, defendant's attorney has Conflict, hearing continued
- 6-24-13 Plaintiff notified Summary Court that the defendant would not consent to the transfer to Common Pleas and requested to reschedule the Motion Hearing
- 6-26-13 Both attorneys notified of Motion Hearing on July 29, 2013
- 7-22-13 Plaintiff withdrew motion to transfer to Common Pleas Court
- 8-22-13 Summary Court attempts to schedule jury strike for September 23, 2013
- 8-29-13 Plaintiff sends Summary Court an Order of Dismissal stating plaintiff has filed this action In Common Pleas Court (2013-CP-04-1658)
- 9-03-13 Plaintiff's Order of Dismissal granted and signed
- 9-09-13 Summary Court receives Defendant's Objection to the Proposed Order of Dismissal stating the plaintiff did not comply with Rule 7(b) or Rule 41(a) of the SCRCP and would only agree to dismissal with prejudice
- 9-17-13 Both attorneys notified of scheduled Motion Hearing for October 3, 2013
- 10-3-13 Plaintiff's Motion to Dismiss due to damages exceeding Magistrate's Court limit of \$7500.00. Defendant argued transferring the case to Common Pleas would be prejudicial to his client by removing the \$7500.00 cap and, if a dismissal was granted, it should be with prejudice. Plaintiff's order was Amended to read Dismissed with Prejudice as to the Magistrate Court Action.

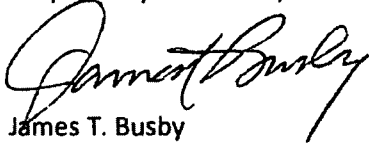
**Summary:**

Defendant's appeal states plaintiff did not comply with Rule 7(b), SCRCP, by failing to file a written motion for the dismissal of the action. The court received plaintiff's written Order of Dismissal on September 3, 2013. Defendant's email of September 8, 2013 and his Objection to the Order of Dismissal clocked in on September 9, 2013 verify receipt of the written Proposed Order of Dismissal. The order states plaintiff filed in Circuit Court because damages exceeded \$7500.00. With the same action filed in the Superior Court of Common Pleas, the Magistrate Court Case was dismissed.

In answer to committing error of law and/or abuse of discretion by dismissing the case, plaintiff's alleged damages of more than \$7500.00 exceeds Magistrate Court jurisdiction requiring the case to be decided in Circuit Court. This court does not believe there is any legal prejudice to the defendant resulting from the dismissal of this case in Magistrate's Court. Magistrate Court cannot deny the plaintiff the right to file his case in Circuit Court when alleged damages exceed Magistrate Court jurisdiction.

Yes, there were scheduling conflicts that caused some delay in resolution. The Motion Hearing scheduled for June.25, 2013 was continue due to defendant's attorney's mediation in Circuit Court, therefore, making the defendant a contributor to the delay in resolution.

Respectfully submitted,



James T. Busby  
Anderson County Magistrate

FILED CLERK'S OFFICE  
ANDERSON SC  
2013 DEC 4 PM 4 45  
COMMON PLEAS AND  
GENERAL SESSIONS

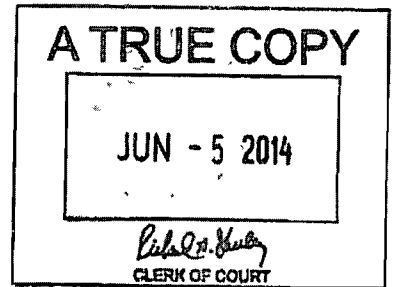
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE COURT OF COMMON PLEAS

Hubert Bethune, )  
 )  
Plaintiff-Respondent, )  
 )  
v )  
 )  
Waffle House, Inc., )  
 )  
Defendant-Appellant. )

Civil Action No. 2013-CP-04-2409

NOTICE OF MOTION AND  
MOTION TO ALTER OR AMEND  
ORDER AND/OR MOTION  
FOR RECONSIDERATION



TO: THE HONORABLE ALEXANDER S MACAULAY  
RODNEY M. BROWN, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant-Appellant Waffle House, Inc. will move before the Honorable Alexander S. Macaulay at such time and place as may be set by the Court, for an Order pursuant to Rule 59(e), SCRCPP, altering, amending, and/or reconsidering the Order filed May 16, 2014, affirming the Magistrate Court's dismissal of the Magistrate Court action bearing Case Number 2012CV0410100585. Written notice of entry of that Order was received by the Defendant-Appellant's counsel on May 23, 2014.

The Defendant-Appellant's motion is based on the following:


1 In the Order filed May 16, 2014, the Court found that "the Magistrate, *ex mero motu*, dismissed the action pursuant to their duty and authority to control the docket in their Court" upon learning that "there were two identical actions pending in different Courts." The Court cited the case of *Crestwood Golf Club v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997), as

authority for the action taken by the Magistrate and for the proposition that a court has the authority to control its docket in this manner. The *Crestwood Golf Club* case, however, does not stand for the proposition for which it is cited. Moreover, the Court has not cited any authority that allows a court to *sua sponte* or *ex mero motu* dismiss a pending action *for any reason other than a party's failure to prosecute*. The Defendant-Appellant submits that the Magistrate Court lacked the authority to *sua sponte* or *ex mero motu* dismiss the action on the basis that the Plaintiff filed an identical action in the Circuit Court.

2. The Court also ruled that "Defendant has suffered no legal prejudice inasmuch as they have the right to present any and all evidence to determine liability and damages, as would have been the case in Magistrate Court or the Court of Common Pleas." The Court, however, did not address any of the bases for legal prejudice actually asserted by the Defendant-Appellant on appeal. As the Defendant-Appellant raised in its Notice of Appeal and as argued at the April 15, 2014 hearing, the dismissal of the action in Magistrate's Court has resulted in the Defendant-Appellant being denied the monetary cap on damages that is established by statute for cases commenced in Magistrate's Court. The Plaintiff-Respondent originally chose to bring the suit in Magistrate's Court which set a cap on his recovery at \$7,500. That was a choice which the Plaintiff-Respondent deliberately made. The Defendant-Appellant is subjected to legal prejudice by the loss of that cap on liability resulting from the dismissal in Magistrate's Court. In the Circuit Court, the Defendant-Appellant will now be subjected to unlimited and unqualified liability, and that constitutes clear legal prejudice that should have resulted in the denial of the voluntary dismissal. The Court is respectfully requested to consider and address this specific showing of legal prejudice, which is not even mentioned, let alone addressed, in the Court's Order filed May 16, 2014.

3. In addition, as the Defendant-Appellant raised in its Notice of Appeal and as argued at the April 15, 2014 hearing, the Plaintiff-Respondent made the conscious choice to file and litigate this action in the Magistrate's Court. The Complaint was filed in Magistrate's Court on February 16, 2012. In July 2013, some 17 months after the filing of this action, the Plaintiff-Respondent filed a Complaint in the Court of Common Pleas. *See, Bethune v Waffle House, Inc.*, Civil Action No. 2013-CP-04-1658. The Complaint filed in the Court of Common Pleas is *word-for-word identical* to the Complaint filed in Magistrate's Court. As a result of the dismissal of the Magistrate's Court action and allowing the action to be re-filed in Circuit Court some 17 months after its original commencement, the Defendant-Appellant is faced with an unnecessary delay in obtaining resolution of the action in contravention of Rule 1, SCRCF. In addition, by allowing the action to be dismissed in Magistrate's Court and re-filed in Circuit Court, the Defendant-Appellant is now subject to the cost and expense of discovery which is otherwise not authorized in Magistrate's Court. These additional grounds are not addressed in the Court's Order filed May 16, 2014. The Court is respectfully requested to consider and address these specific bases showing legal prejudice.

DAVIDSON & LINDEMANN, P.A.

BY: 

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Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Defendant- Appellant Waffle House, Inc*

Columbia, South Carolina

June 2, 2014

1 State of South Carolina  
2 County of Anderson In the Court of Common Pleas

3  
4 Hubert Bethune, )  
5 Plaintiff, )  
6 -vs- )  
7 Waffle House, Inc., )  
8 Defendant. )  
9 \_\_\_\_\_ )

2013-CP-04-2409

April 15, 2014

Transcript of Record

10

11

B E F O R E :

12

The Honorable Alexander S. Macaulay, Judge

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14

A P P E A R A N C E S :

15

Rodney M. Brown, Esquire  
Attorney for Plaintiff

16

17

Andrew F. Lendemann, Esquire  
Attorney for Defendant

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23

24

Diane L. Thommes, RPR, CRR  
Circuit Court Reporter

25

1 THE COURT: Waffle House, Inc., versus Hubert  
2 Bethune, 2013-CP-04-2409. Mr. Brown for Waffle House,  
3 Inc., and Mr. Lindemann --

4 MR. BROWN: Actually, it's the other way, Judge.  
5 I'm the plaintiff's attorney.

6 MR. LINDEMANN: This is actually an appeal.

7 THE COURT: It's your appeal, though, isn't it?

8 MR. LINDEMANN: No, it's mine.

9 MR. BROWN: I represent the plaintiff. He  
10 represents Waffle House.

11 MR. LINDEMANN: It's kind of got an unusual  
12 procedural history, Judge.

13 THE COURT: If it's an appeal, then you are the  
14 appellant.

15 MR. LINDEMANN: That's correct.

16 THE COURT: The appellant is Waffle House.

17 MR. LINDEMANN: That's correct.

18 THE COURT: All right, Mr. Brown. And the  
19 respondent is Hubert Bethune. Mr. Lindemann.

20 MR. BROWN: No, I'm Mr. Brown.

21 MR. LINDEMANN: Your Honor, Waffle House is the  
22 defendant/appellant. We were the defendant in the  
23 magistrate's court.

24 THE COURT: Mr. Brown, you represent?

25 MR. BROWN: The plaintiff/respondent.

1 THE COURT: Mr. Bethune.

2 MR. BROWN: That's correct.

3 THE COURT: There we go. Now I've got it.

4 MR. BROWN: Like I said, a tortured procedural  
5 history got us here.

6 THE COURT: Okay. All right. Now, Waffle House  
7 Inc., is represented by Mr. Lindemann.

8 MR. LINDEMANN: That's correct, your Honor.

9 THE COURT: And Mr. Bethune is represented by  
10 Mr. Brown. Very good. Thank you for your patience.  
11 Appreciate your help in at least getting all that.

12 All right. Yes, sir.

13 MR. LINDEMANN: Thank you, your Honor. May it  
14 please the Court, Andrew Lindemann for Waffle House.  
15 As your Honor -- as we have just discussed, this is an  
16 appeal from magistrate's court and has somewhat of an  
17 unusual posture in magistrate's court and how it got to  
18 this particular court.

19 This is an action that was brought in magistrate's  
20 court by Mr. Bethune against Waffle House. It's a  
21 personal injury case. He alleges that while eating I  
22 believe it was grits at a Waffle House here in Anderson  
23 County, that previous to that there had been a plate  
24 that was broken. And ultimately when he bit down on  
25 some of his grits, there was a little piece of plate, a

1 little shard of the plate in his grits and caused him  
2 some dental issues. That's the extent of the case.

3 Now, Mr. Bethune initially brought this lawsuit in  
4 magistrate's court back in July -- excuse me, in  
5 February of 2012. The events took place in August of  
6 2011. He filed suit in magistrate's court several  
7 months later, February 16, 2012. The case was in  
8 magistrate's court, and it was pending for some time.  
9 It was called to trial several times, but because of  
10 scheduling conflicts either by Mr. Brown or myself -- I  
11 don't even remember anymore -- it was carried over  
12 several times, and then ultimately, 17 months after it  
13 was pending in magistrate's court, the plaintiff,  
14 Mr. Brown's client, initially made a motion to transfer  
15 the case to circuit court. That motion was actually  
16 never heard. It was opposed by us. And then  
17 ultimately what Mr Brown did was he essentially filed  
18 a separate lawsuit in the court of common pleas.

19 So as we stand here today, there are two lawsuits.  
20 The summons and complaint for the two lawsuits are  
21 identical. And to give the Court the exact  
22 information --

23 THE COURT: How about jurisdiction as far as  
24 recovery sought?

25 MR. LINDEMANN: Well, that's the question. When

1 it was originally brought, of course, the complaints  
2 have, if I remember correctly, have no specific prayer  
3 for any specific amount. Simply prays for compensatory  
4 and punitive damages. Literally. And I'll be happy to  
5 show your Honor the two complaints. They are literally  
6 word for word the same. The only difference is the  
7 caption where one is brought in magistrate's court and  
8 one is brought in the court of common pleas. So  
9 ultimately what happened was that essentially mooted  
10 the motion to transfer. My position on the motion to  
11 transfer, although it's not before your Honor, just for  
12 background information, is there's no authority to  
13 transfer a case from magistrate's court unless there is  
14 a counterclaim that is then brought by the defendant  
15 that exceeds the amount in controversy, and that was  
16 not at play in this case.

17 THE COURT: How about if the initial action  
18 exceeds the amount, the initial action's amount exceeds  
19 the jurisdictional --

20 MR. LINDEMANN: Well, see, I disagree with that.  
21 I think in this particular case the plaintiff chooses  
22 where he brought his action. He brought it in  
23 magistrate's court. And as a result of that, there  
24 were certain benefits or certain legal rights that the  
25 defendant has. And I'm sort of jumping ahead here.

1 And if I can, let me finish with the --

2 THE COURT: Please. I'm sorry.

3 MR. LINDEMANN: Anyway, your Honor, so essentially  
4 what happened was after the plaintiff brought their  
5 action, their identical action in the court of common  
6 pleas, there was apparently contact between plaintiff's  
7 counsel and the Court indicating that the magistrate's  
8 court case was no longer necessary. The Court  
9 apparently, at least according to what Mr. Brown said  
10 in the past, he was told to send an order of dismissal  
11 in. He sent an order of dismissal to the magistrate's  
12 court. When I got copied on it, I filed an opposition  
13 to that. And Magistrate Busby actually then entered  
14 the order. But once he got my objection to it, he held  
15 a hearing and ultimately he dismissed the magistrate's  
16 court case.

17 We are appealing the dismissal of the magistrate's  
18 court case and this is why. Number one, procedurally  
19 there was never a motion to dismiss that was ever  
20 filed. Number two, no grounds for a dismissal were  
21 ever given. Number three, no affidavits or any type of  
22 evidence was ever provided to the magistrate's court to  
23 support any claim to a voluntary dismissal. And number  
24 four, and most importantly, Waffle House contends that  
25 there are legal prejudice that prevents the dismissal

1 of that case, the voluntary dismissal of that case in  
2 magistrate's court. And those are outlined in our  
3 appeal. Those are the same issues that were actually  
4 argued to Judge Busby.

5 Number one, by dismissing the case in magistrate's  
6 court and refileing it in common pleas court, the case  
7 has been substantially delayed. So that's a violation,  
8 we would submit, of a right to a speedy trial under  
9 Rule 1 which obviously applies to magistrate's court as  
10 well. Number two, your Honor --

11 THE COURT: But haven't you also sought  
12 continuances?

13 MR. LINDEMANN: I don't recall which party sought  
14 the continuances.

15 THE COURT: Well, I'm looking. I think both of  
16 you have.

17 MR. LINDEMANN: I think there were --

18 THE COURT: In fact, I saw something about  
19 Laurens, somebody had something in Laurens.

20 MR. LINDEMANN: I think that was actually to have  
21 a continuance by Mr. Brown

22 THE COURT: I'm just saying I have looked at the  
23 file, and I notice it's rather -- well, one these cases  
24 are rather significant.

25 MR. LINDEMANN: I understand that. The other

1 grounds are obviously now the case is in court of  
2 common pleas subject to discovery, that it would not be  
3 under the magistrate's court rules, so that's an  
4 additional expense. This is a very minor case, your  
5 Honor. Number three and most importantly, by filing  
6 the case in magistrate's court, the defendant had the  
7 benefit of a cap. Essentially, the plaintiff could not  
8 recover more than \$7,500. By now dismissing the case  
9 in magistrate's court, allowing the case to be refiled  
10 in the court of common pleas, we lose that cap, which  
11 is a significant defense obviously.

12 THE COURT: Have you answered?

13 MR. LINDEMANN: The case in which court?

14 THE COURT: Any court.

15 MR. LINDEMANN: Yes, I've answered both lawsuits.

16 THE COURT: So you have answered in the court of  
17 common pleas as well as in magistrate's?

18 MR. LINDEMANN: I have. And I raised 12(b)(8),  
19 and there is a pending motion to dismiss, I believe, on  
20 that. And we certainly preserved 12(b)(8) in our  
21 answer for having two identical lawsuits going on. The  
22 reason that hasn't been heard yet is because obviously  
23 this appeal needs to be heard as to whether or not  
24 there are two actions pending.

25 Our contention is Judge Busby should not have

1 dismissed the case in magistrate's court, that there  
2 was legal prejudice to the defendant, an error of law  
3 has been made. There wasn't even a motion to dismiss  
4 filed. I mean, procedurally it wasn't even handled  
5 correctly. There wasn't a motion to dismiss filed,  
6 supporting affidavits --

7 THE COURT: I'm curious. If the judge dismissed  
8 the action in magistrate's court, you took the appeal  
9 to common pleas?

10 MR. LINDEMANN: That's right. That's where the  
11 appeal would have had to go. This is the appeal from  
12 the magistrate's court case.

13 THE COURT: Gotcha.

14 MR. LINDEMANN: Attached to my notice of appeal is  
15 his order. He originally signed an order of dismissal  
16 before he got my objection. He then issued this  
17 amended order of dismissal. And you can see he  
18 handwrites there that the dismissal only applies to  
19 magistrate's court and is dismissed with prejudice as  
20 to the magistrate's court action. So that is what  
21 we're appealing. It's ripe, I would submit, for an  
22 appeal here. But we believe this case was originally  
23 brought by the plaintiff in magistrate's court. He  
24 hasn't demonstrated to the magistrate's court any basis  
25 for a voluntary dismissal. There wasn't even a motion

1 filed. And, quite frankly, there is legal prejudice  
2 that should have prevented this case from being  
3 voluntarily dismissed in magistrate's court. We're  
4 asking this Court to reverse an order that this case be  
5 tried in magistrate's court.

6 If your Honor grants that relief, there is a  
7 separate motion that will need to be heard eventually  
8 that's not before your Honor on the common pleas case  
9 because ultimately they would be two identical lawsuits  
10 proceeding in two different courts.

11 THE COURT: Mr. Brown, Mr. Lindemann says you  
12 belong in magistrate's court.

13 MR. BROWN: May it please the Court. Your Honor,  
14 what Mr. Lindemann is asking for is an absurd  
15 construction of the law. The statutes --

16 THE COURT: I'm sure he wouldn't agree with that.

17 MR. BROWN: Statute 22-3-30 Code of Laws of South  
18 Carolina requires a magistrate -- the language in the  
19 statute requires the magistrate to transfer a case if  
20 the counterclaim exceeded jurisdictional limits,  
21 damages exceeds the \$7,500. How can it be argued that  
22 the magistrate must transfer a case if the counterclaim  
23 exceeds \$7,500 but can't dismiss the case or  
24 transfer --

25 THE COURT: I think what Mr. Lindemann says,

1 there's no basis in the record for a finding by the  
2 magistrate that this exceeds 7,500.

3 MR. BROWN: Well, but we're not here on transfer.  
4 There was a motion pending for us to transfer it. And  
5 as your Honor has mentioned about the continuances,  
6 that was scheduled two or three times in magistrate's  
7 court, and either Mr. Lindemann or I were unavailable.  
8 So instead of waiting for that to be heard, I just went  
9 ahead and filed in common pleas court.

10 THE COURT: Let me ask you something. Had  
11 Mr. Lindemann answered by the time that you transferred  
12 it or moved to -- did you move to transfer it or just  
13 filed a new action?

14 MR. BROWN: No, I moved to transfer it in  
15 magistrate's court originally. And then that got  
16 scheduled two or three times and we never got to the  
17 magistrate's court to have it heard, so I went ahead  
18 and filed. I didn't want a jurisdictional problem or  
19 statute problem, so I filed over here. And I think the  
20 plaintiff has every right to file a case in common  
21 pleas court. And then at that point in time the  
22 magistrate had no choice but to dismiss the case. When  
23 the matter came back before the Court on this motion to  
24 transfer, on my motion to transfer, there was no  
25 case --

1 THE COURT: So you're telling me that actually,  
2 and I don't know if it's in the magistrate's rules, but  
3 I understand when they're not in conflict, the rules of  
4 civil procedure apply to magistrate's court. You're  
5 saying that the magistrate sua sponte, on his own  
6 motion, granted a 12(b)(8) motion that there were two  
7 actions pending in separate courts?

8 MR. BROWN: That's correct, your Honor. That's  
9 correct, but he --

10 THE COURT: He just forgot to put 12(b)(8).

11 MR. BROWN: That's correct. Procedurally he  
12 called my office to schedule the motion to transfer,  
13 and I told him that I had already filed in common pleas  
14 court, and then he said, Okay, I have no choice but to  
15 dismiss this instead of hearing the motion to transfer,  
16 and dismissed the case.

17 THE COURT: In other words, it sounds like the  
18 magistrate was doing in his infinite wisdom what the  
19 rules provide. Like you raised the point yourself,  
20 that your answer, there is another action pending in  
21 another court.

22 MR. LINDEMANN: But two points to that, your  
23 Honor. Number one, the magistrate did not rule based  
24 on 12(b)(8).

25 THE COURT: Well --

1 MR. LINDEMANN: It was not even before him. There  
2 is no written motion to that effect.

3 THE COURT: You didn't raise it in your common  
4 pleas or your circuit court answer?

5 MR. LINDEMANN: I did.

6 THE COURT: And if not, is a circuit court record  
7 available to the magistrate?

8 MR. LINDEMANN: Well, I don't know whether he  
9 looked at it or not, but --

10 THE COURT: Well, we don't. But we have to give  
11 him some credit that he's a conscientious jurist  
12 looking at all things that might pertain to the action  
13 and he wanted to be sure that he didn't do something  
14 wrong because of something else already pending.

15 MR. LINDEMANN: I think you're speculating as to  
16 that, but beside the point --

17 THE COURT: I'm not speculating, I just say it's a  
18 matter of record that 12(b)(8) because, you know, I  
19 think, if I'm not mistaken, I guess magistrates are  
20 like circuit courts, that they have a responsibility to  
21 see that their docket is not complicated by matters  
22 that should be dismissed.

23 MR. LINDEMANN: Well, your Honor --

24 THE COURT: And I think it's Crestwood Golf Club  
25 versus somebody.

1 MR. LINDEMANN: Even if that was the magistrate's  
2 rationale, which I don't believe is clear in the record  
3 by any means, it would be incorrect. Rule 12(b)(8)  
4 doesn't mean that the Court can pick whichever case  
5 they want to dismiss. The earlier case stands. The  
6 later case is the one that's dismissed when there are  
7 two identical lawsuits pending.

8 THE COURT: Well, it's not identical because  
9 apparently jurisdiction in magistrate's court is  
10 limited to 7,500.

11 MR. LINDEMANN: Well, they are identical  
12 because --

13 THE COURT: Well, the plaintiff now says and maybe  
14 he's making some -- I don't know. Do we have to in  
15 magistrate's court affirmatively allege that it's  
16 within the jurisdiction of the court?

17 MR. BROWN: You would, your Honor, for them to  
18 have jurisdiction or you would have to allege that it  
19 doesn't exceed \$7,500.

20 THE COURT: Did you say that it was less than  
21 \$7,500?

22 MR. BROWN: I never say what my damages are in a  
23 complaint.

24 THE COURT: I know that. But in this case.

25 MR. BROWN: No. That was never talked about.

1 THE COURT: Go ahead. I'll hear you out.  
2 Because, as I say, really it sounds like it's a bit of  
3 a dilemma here. Now, first of all, I mean, under the  
4 rules at least in the circuit court rules or common  
5 pleas, rather, the plaintiff is entitled to dismiss his  
6 action at any time until there's been an answer. And I  
7 guess it's the same in --

8 MR. LINDEMANN: Well, there was an answer, your  
9 Honor.

10 THE COURT: Did you raise a 12(b)(8) motion?

11 MR. LINDEMANN: I did not raise that in  
12 magistrate's court because when we answered in  
13 magistrate's court, there was only one action, the  
14 magistrate's court action which, incidentally, did not  
15 include a prayer for any specific amount. So the  
16 12(b)(8) issue is something that was not decided by the  
17 magistrate. And, anyway, if he did decide it, as I  
18 indicated, he decided incorrectly. He can't pick and  
19 choose which of the two lawsuits --

20 THE COURT: In other words, he compounded an  
21 error.

22 MR. BROWN: But if he doesn't have jurisdiction --

23 THE COURT: In other words, if it would have been  
24 wrong to have two actions pending at the same time and  
25 because you didn't raise it in magistrate's court, he

1 knew by looking at the record in circuit court that  
2 it's the same action.

3 MR. LINDEMANN: We had raised it -- it was the  
4 circuit court action that was brought second. We  
5 raised the 12(b)(8) in --

6 THE COURT: I tell you what. All right. What's  
7 your other motion?

8 MR. LINDEMANN: Well, that's the motion. But the  
9 other point I was just going to make, you indicate that  
10 a person, a plaintiff, can dismiss their action if they  
11 want to. Once a party answers, that's not the case.  
12 If there is a showing of legal prejudice, and that's  
13 our argument, we have --

14 THE COURT: What is the prejudice now?

15 MR. LINDEMANN: Legal prejudice. Obviously, with  
16 the case pending in magistrate's court, number one, we  
17 have a cap of \$7,500 which is a defense we lose.  
18 Number two, it costs my client a substantial more  
19 amount of money in order to comply with discovery under  
20 the rules of civil procedure which don't apply in  
21 magistrate's court. And, number three, there was the  
22 Rule 1 aspect of it, too, that it substantially delayed  
23 adjudication in this case.

24 THE COURT: Well, as far as the substantial delay,  
25 it seems like that's clean hands. As I say, unless

1 you -- I may be wrong, but I think you also requested  
2 continuances. Do you want me to look and see?

3 MR. LINDEMANN: Well, your Honor, again, I didn't  
4 go back to actually --

5 THE COURT: Well, that's what I'm saying, that I  
6 think let's don't ride that horse.

7 MR. LINDEMANN: This case was filed in  
8 magistrate's court in February of 2012. If all this  
9 hadn't happened, we would have had a trial and be done  
10 with the case in magistrate's court.

11 THE COURT: You should have moved quicker. As  
12 soon as, you say, had them locked into magistrate's  
13 court, \$7,500, let's move forward, ask for a quick and  
14 speedy and do the whole thing. But you didn't.

15 MR. LINDEMANN: We followed the Court's schedule.  
16 We didn't ask for an expedited trial.

17 THE COURT: You also asked for continuances.

18 MR. LINDEMANN: Without going back to look at who  
19 actually requested --

20 THE COURT: If the suggestion is you didn't, then  
21 I'll go through the record and see and be sure you  
22 didn't.

23 MR. LINDEMANN: That's fine. The main issue, your  
24 Honor, is obviously the \$7,500 cap. But we have made a  
25 showing of legal prejudice, I would submit.

1 THE COURT: You did have one in January of this  
2 year, 21st.

3 MR. LINDEMANN: I think that's in this case, not  
4 in magistrate's court.

5 THE COURT: Well, we -- that's what this case is  
6 about, isn't it, the magistrate's court case?

7 MR. LINDEMANN: Well, the dismissal in  
8 magistrate's court had already occurred at that point  
9 in time, your Honor.

10 THE COURT: In other words, so this was the only  
11 case that was pending at the time, so you even asked  
12 for a continuance as late as January of 2014. All  
13 right.

14 Now, of course, whatever damages the plaintiff is  
15 entitled to would be determined by a judgment in  
16 whichever court it is. So, I mean, to me that is also  
17 a rather significant interest. I don't know if the  
18 analogy is correct or invalid, but I'm going to look at  
19 this almost like a default using the 5960 analogy as to  
20 good cause or if it's something that would go to error.

21 All right. So the magistrate dismissed the action  
22 in magistrate's court. You took exception to it.

23 MR. LINDEMANN: That's correct.

24 THE COURT: So you put it in circuit court.

25 MR. LINDEMANN: I appealed to circuit court.

1 THE COURT: That's right. Excuse me. But it was  
2 the same action. Because it was also a circuit court  
3 action.

4 All right. Well, I'm going to deny your motion  
5 for the appeal. I'm going to say the magistrate did  
6 the right thing as any person -- any judge would do to  
7 keep the docket uncomplicated, in other words, the  
8 ultimate resolution of the matter. Now, if you have,  
9 for example, now that we do have discovery, because  
10 that's an important thing. Discovery is not  
11 something -- that's why we require lawyers in circuit  
12 court rather than pro se representatives of your  
13 client. In other words, the manager of Waffle House  
14 can't come in here and have the same standing as do  
15 you.

16 So I'm going to deny the appeal from the  
17 magistrate's court. That would leave the dismissal in  
18 place. And you can appeal that to the court of appeals  
19 or the supreme court. Be good information for other  
20 judges. But, Mr. Brown, you will stay in circuit court  
21 until Mr. Lindemann finds some way to get you out of  
22 circuit court.

23 MR. LINDEMANN: Your Honor, will you be issuing a  
24 written order just in case we want to take that up?

25 THE COURT: Let's make Mr. Brown work on this one.

1 MR. BROWN: I'll be happy to, Judge.

2 THE COURT: Very good. Send him a copy under Rule  
3 5 and I'll wait five days to sign it. Thank you for  
4 your patience with the Court, but I find if it can  
5 happen, it will happen in Anderson County. You proved  
6 the rule.

7 MR. LINDEMANN: I appreciate it.

8 THE COURT: Thank you.  
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**RODNEY M. BROWN PA**  
ATTORNEY AT LAW

July 22, 2013

VIA FACSIMILE ONLY

Anderson Summary Court  
2404 N. Main Street  
Anderson, South Carolina 29621

RE: Hubert Bethune vs. Waffle House, Inc.  
2012CV0410100585

Dear Sir or Madam:

Please be advised that I am withdrawing the Motion previously filed on the above-referenced case to have this matter referred to Common Pleas Court. Accordingly, I will no longer need the hearing scheduled for Monday, July 29, 2013 at 2:00 p.m.

If you should have any questions or problems with this, please do not hesitate to contact me.

Sincerely,



Rodney M. Brown

amb

cc: Andrew F. Lindemann, Esquire  
Hubert Bethune


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**CERTIFICATE OF COUNSEL**

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The undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

DAVIDSON & LINDEMANN, P.A.

BY:  \_\_\_\_\_

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*Counsel for Appellant*

Columbia, South Carolina

March 11, 2015


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**CERTIFICATE OF COMPLIANCE**

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The undersigned counsel for the Appellant certifies that the Record on Appeal complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

DAVIDSON & LINDEMANN, P.A.

BY:   
\_\_\_\_\_  
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March 11, 2015