

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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MAY 7 2012

APPEAL FROM GEORGETOWN COUNTY  
Circuit Court

**S.C. SUPREME COURT**

Benjamin H. Culbertson, Circuit Court Judge  
Case No. 2008-CP-22-00834

Court of Appeal Case No. 2009131452

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TRINITY INVESTMENTS, LLC,

Respondent,

v.

MARINA VENTURES, INC. and PIONEER PROPERTIES, INC.,

Petitioners-Appellants.

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### QUESTION PRESENTED FOR REVIEW

Did the trial court err in approving a receiver's gift of Petitioners' entire assets to the receiver's own company (the Respondent) even though Petitioners were never served with process; no default judgment was ever entered against Petitioners; Respondent never obtained any judgment establishing a debt owed by Petitioners despite two earlier lawsuits; and Respondent's lawyer never disclosed these facts to the trial judge when questioned during an *ex parte* hearing which resulted in the approval of the self-dealing?

### STATEMENT OF THE CASE

The Appellants are corporations registered with the South Carolina Secretary of State with Walter F. Green as the Registered Agent. Walter F. Green has been deceased since 2004.

On June 20, 2008, Respondent's attorney filed a Summons and Complaint requesting that Johnnie J. Young be appointed Receiver. On June 30, 2008, the Supreme Court suspended the Respondent's attorney for nine (9) months. Notice of the Suspension and Notice of Appointment of the Trustee were published once a week for three weeks in the Georgetown Times, a newspaper of general circulation in Georgetown County. On August 6, 2008, Julie Parker Green, the sole owner of the Appellant corporations filed a *Pro Se* Answer and Counterclaim. These pleadings were never served on the former counsel of the Respondent, the Trustee for the former counsel of the Respondent, or the new counsel for the Respondent.

Laura M. Moyer of Maring Law Firm, P.A., now known as Maring & Moody, LLC, was substituted as Counsel in the case by Order of the Honorable Larry R. Patterson, dated November 12, 2008, and filed on November 17, 2008.

On November 18, 2008, a Motion and Order for Appointment of Receiver, Consent to Serve as a Receiver, and Notice of Appointment of Receiver were filed with the Court. On December 18, 2008, the Notice of Appointment of the Receiver was published in the Coastal Observer pursuant to an Order of Publication signed by the Honorable Alison Renee Lee and filed on November 18, 2008. On March 24, 2009, the sole owner of the corporation, Julie Parker Green, filed a *Pro Se* motion for reconsideration of the appointment of the Receiver. Respondent was never served with a Motion for Reconsideration or Notice of a Motion for Reconsideration. The Honorable Diane S. Goodstein dismissed the motion for reconsideration on the grounds that the motion was not timely made and that Mrs. Green, as a non-lawyer, could not represent the corporations in the Circuit Court.

On May 5, 2009, the Respondent moved for the discharge of the Receiver. The Clerk of Court for Georgetown County sent notice of the hearing to the Respondent and the Appellants for the hearing date of May 22, 2009. The Respondent published a Notice of Hearing in the Post and Courier, a newspaper of general circulation in Charleston and Georgetown Counties.

Neither the Appellants nor Julie Parker Green formally requested a continuance to seek legal representation. The Appellants sent an e-mail to the Honorable Michael Baxley requesting a continuance. Judge Baxley referred the e-mail to the Honorable Benjamin Culbertson. Judge Culbertson then denied the informal request for a continuance. No formal Motion for a Continuance was filed. (App., pp. 85-88.)

On May 22, 2009, Respondent's counsel sought the Receiver's discharge before the Honorable Benjamin Culbertson. Walter Jeffrey Dillon Green, a non-lawyer,

represented to the Court that he was appearing on behalf of Julie Parker Green, the sole owner of the Appellant corporations. The Court informed Mr. Green “because these are corporations the law mandates that only attorneys can appear on behalf of corporations in court proceedings and because there is a restriction against the unauthorized practice of law you can't appear on behalf of those defendants . . .” (App., p. 65, lines 4-8.) No request for a continuance was made to the Court to give the Appellant corporations an opportunity to obtain counsel.

At the hearing, the Receiver's report as well as quit-claim deeds transferring real property owned by the Appellant corporations to Trinity Investments, LLC, the Appellants' only secured creditor, in the amount of \$766,006.02, were offered as exhibits. (App. p. 66.)

The Court by its Order dated May 29, 2009, approved the actions of the Receiver and discharged him from his duties. (App., p. 4.) The Order Discharging the Receiver was filed on June 5, 2009. No motion for reconsideration or any other post-trial motions were filed in regards to the final order dated May 29, 2009, by the Appellants or Mrs. Green, the sole shareholder.

The Appellants' counsel states that he appeared on behalf of the corporations at a roster call on May 26, 2009. It should be duly noted that this was the first time that the Appellant corporations were represented by an attorney. Appellants' counsel did not file a notice of appearance, a motion for reconsideration, or any other post-trial motions even though he was representing the corporations.

On June 26, 2009, an appeal was filed by Marina and Pioneer, represented for the first time by counsel G. Turner Perrow. (App., p. 16.) The Court of Appeals rejected the

appeal, and on March 2, 2012, the Court of Appeals also denied the companies' petition for rehearing. (App., pp. 137-142.)

On April 5, 2012, the Appellants filed the Petition for Writ of *Certiorari* in The South Carolina Supreme Court.

### LEGAL ANALYSIS

**I. APPELLANTS FAILED TO RAISE OR PRESERVE ANY ISSUES FOR APPELLATE REVIEW DESPITE HAVING VOLUNTARILY APPEARED IN THIS CASE, AND APPELLANTS DUE PROCESS RIGHTS WERE NOT VIOLATED.**

**A. Appellants failed to raise any of the issues being argued in this matter.**

The issues set forth by the Appellants in their brief are raised for the first time on appeal and thus cannot be considered by the appellate courts. Our Courts “have adhered to the rule that where an issue has not been ruled upon by the trial judge or raised in post-trial motion, such issue may not be considered on appeal.” *Pelican Building Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). South Carolina does not have a plain error rule for appeals. *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) (citation omitted). Thus, it is the litigant's duty to bring to the trial court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *South Carolina Department of Transportation v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007).

Furthermore, it is clear from the Appendix that the Appellants had ample opportunity to raise these issues which they now seek to have this Court address. Specifically, it is undisputed that Julie Parker Green filed an answer and counterclaim on behalf of the corporations as its sole owner with the Clerk of Court for Georgetown

County on or about August 6, 2008, months before the final resolution of this case (App., pp. 28-30). It is also undisputed that Julie Parker Green subsequently filed a motion for reconsideration of the appointment of a receiver on March 20, 2009 (App., pp. 21-22). The Court in its order dismissing the motion for reconsideration dated March 26, 2009 advised Mrs. Green that she could not represent the corporations and needed to hire an attorney to represent the corporations (App., p. 7). Ms. Green also had her son appear on behalf of the Appellants at a hearing on May 22, 2009, and the Court explained that he could not appear on behalf of the Appellants because he was not a licensed attorney (App., pp. 60-66). Despite being on notice for months that she could not represent the Appellants, Ms. Green failed to take any action to retain legal counsel and raise the various issues the Appellants seek to raise on appeal. See *Collins v. Sigmon*, 299 S.C. 464, 468, 385 S.E.2d 835, 837-38 (1989) (applying the ancient maxim “equity aids the vigilant and diligent” and not those who sleep on their rights).

**B. Appellants' due process rights were not violated, and Appellants waived any alleged due process violation by their appearance in this case and their failure to act.**

In addition to the foregoing, any defect or irregularity in service of process is waived by defendants' general appearance. *Strickland v. Consolidated Energy Products Co.*, 274 S.E. 554, 265 S.E.2d 682 (1980). The Court in *Strickland* went on to hold that a “general appearance to be a voluntary submission to the jurisdiction of the court.” *Id.* at 555. In the present action, it is undisputed that Julie Parker Green submitted herself as sole owner and shareholder of the Appellants to the jurisdiction of the Court.

Julie Parker Green filed a counterclaim with her answer on behalf of the corporations but the same was never served. The Clerk of Court's file also indicates that there is no summons attached to the counterclaim.

The Appellants' argument of insufficient service of process fails because of the actions of the sole owner of the Appellants. In this case, the sole owner, although practicing law without a license, has bound the corporations by the filing of an answer in the Clerk's file, filing a motion for reconsideration, and appearing *Pro Se* before the Court. This issue has been discussed in the treatise 8 A.L.R. 5<sup>Th</sup> 653 §17 *Effect of corporation's appearance through nonattorney*. This treatise states that courts have held or recognized that a corporation which appeared improperly through an agent other than an attorney could not avoid the results of a proceeding by alleging the impropriety of its own appearance, the appearance would be deemed to bind the corporation. Citing *Scandia Down Corp. v Euroquilt, Inc.* (1985, CA7 Ill) 772 F2d 1423, 227 USPQ 138, 3 FR Serv 3d 195, cert den 475 US 1147, 90 L Ed 2d 346, 106 S Ct 1801, 229 USPQ 560; *United States v Priority Products, Inc.*, (1985) 9 CIT 391, 615 F. Supp. 593.

It is undisputed that the sole owner of the corporations had actual knowledge and was in possession of the summons and complaint because she, although practicing law without a license, attempted to file a responsive pleading, motions and made appearances. Our Courts have held that the principal object of service of process is to give notice to the defendant corporation of the proceedings against it. *Burris Chemical, Inc. v. Daniel Construction Co.* 251 S.C.483, 163 S.E.2d 618 (1968). Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance. Rule 4(d) ("Voluntary appearance by defendant is equivalent to personal service."); *Stearns Bank*

*National Assoc. vs. Glenwood Falls, LP*, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007). Also see, *Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 66 (Ct. App. 1996) at 66 (“[I]nquiry must only be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.”).

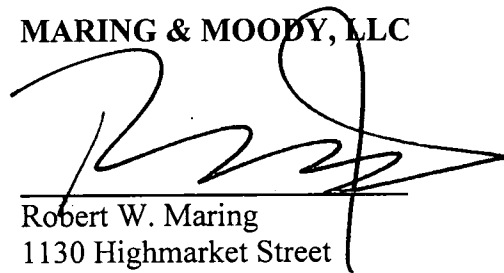
Procedural due process requires notice, the opportunity to be heard in a meaningful way, and judicial review.” *Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 569 (Ct. App. 2002). Based upon the actions of Ms. Green, there is no doubt that the Appellants had notice of these proceedings. Furthermore, the Appellants had more than sufficient opportunity to be heard in a meaningful way. The Court informed the Appellants more than once that they needed legal counsel to represent them. The Appellants voluntarily chose not to obtain counsel.

### **CONCLUSION**

Based on the above, Respondent respectfully requests that this Court affirm the findings of the trial Court and the Court of Appeals as to each issue presented on appeal.

Respectfully submitted,

**MARING & MOODY, LLC**



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**CERTIFICATE OF SERVICE**

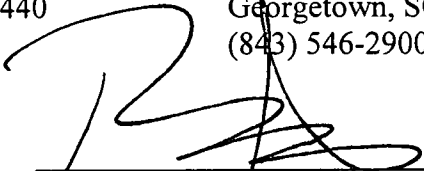
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I certify that I have served all counsel in this action with a copy of the Return to Petition for Writ of Certiorari by U.S. mail sent on May 4, 2012, addressed to the following:

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S.C. SUPREME COURT  
pm 5-4-12

Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

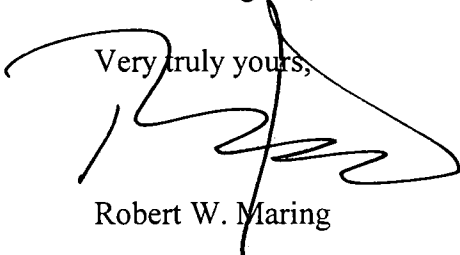
**RE:** Trinity Investments, LLC v Marina Ventures, Inc., and Pioneer Properties, Inc.

Dear Sir/Madam:

Please find enclosed an original and seven (7) copies of Respondent's Return to Petition for Writ of Certiorari and Certificate of Service. Please file the Return and return a clocked copy to this office in the enclosed prepared envelope.

Please call if you need anything further. With kindest regards, I am

Very truly yours,

  
Robert W. Maring

RWM:amp

Enclosures

cc: Kevin R. Eberle, Esquire  
G. Turner Perrow, Esquire  
Franklin D. Beattie, Esquire