

APPENDIX

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S.C. Supreme Court

JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

J. Sam Scoville, Esq,
P. O. Drawer 1107
Beaufort, SC 29901
Attorney for
Respondent LiLing Sun

Jackson H. Daniel, III, Esq
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
Attorney for Respondents
Matyushesky, CODA and Varg

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Carmen Mullen, Circuit Judge
Marvin H. Dukes, III, Master-In-Equity**

APPEAL CASE No. 2011-204367

Circuit Court Case No. 2011-CP-07-02546

**OLESYA MATYUSHEVSKY, CITIZENS
OPPOSING DOMESTIC ABUSE, CHRISTINE
VARG and LILING SUN**

Respondents

v.

JOSEPH C. SUN

Appellant

CORRECTED RECORD ON APPEAL

JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

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40 Calhoun Street, Suite 400
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Attorney for Respondents
Matyushesky, CODA and Varg

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CERTIFICATE OF COUNSEL

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

February 14, 2014



 JOSEPH C. SUN, pro se
 P. O. Box 151
 Bluffton, SC 29910
 843-227-0963

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

LILING SUN,

Plaintiff

v.

JOSEPH SUN,

Defendant.

IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT

FILE BOOK NO. 09-DR-07-00628

PENDENTE LITE ORDER

Date of Hearing:
Presiding Judge:
Plaintiff's Attorney:
Defendant's Attorney:
Court Reporter:

June 25, 2009
Hon. Peter L. Fuge
Olesya Matyushevsky
Pro Se
Deborah A. Anderson

FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

2009 JUN 25 PM 3:44

This matter comes before this Court upon the filing of Summons and Complaint for Separate Maintenance and Support on April 21, 2009. The Final Hearing was scheduled June 12, 2009 but was continued by Plaintiff for good cause, that being Insufficient time allotted. Hon. Peter L. Fuge granted the continuance. Subsequently, Notice of Motion and Motion for Temporary Relief was filed on June 8, 2009. The Defendant was given notice of this hearing through certified mail.

Present at the Hearing were the Plaintiff, with her attorney of record, Olesya Matyushevsky, Esquire, and the Defendant appeared Pro Se.

Prior to the hearing the Plaintiff presented Affidavits in support of the Plaintiff's position. After fully reviewing the pleadings, the Affidavits, and financial declarations, as well as listening

to the arguments of counsel and the Defendant, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. I find that the Plaintiff is a citizen and resident of Beaufort County, South Carolina currently residing in Beaufort, South Carolina.
2. I find that the Defendant is a citizen and resident of Beaufort County, South Carolina currently residing in Bluffton, South Carolina.
3. I find that the Plaintiff and Defendant were lawfully married on May 14, 1999, in Beaufort, South Carolina.
4. I find that born of this marriage was one child to-wit: Abigail Sun, born April 27, 2001. I further find that no other children are expected as of this date.
5. I find that that on or about March 10, 2009 the parties separated and have lived separate and apart since that date.
6. I find that based on the testimony it is necessary for the best interest of the child that the Plaintiff have temporary physical and legal custody of the child. Therefore, I find that the Plaintiff is granted sole physical custody of the child.
7. I find that the Defendant will have visitation with the child every Saturday between 9 A.M. and 6 P.M. The exchange should take place at Sonic Drive-In parking lot in Bluffton, South Carolina.
8. I find that neither party shall pay child support at this time until further Order by this Court.
9. I find that the Defendant must immediately turn over the engagement ring to the Plaintiff. *Signature of Plaintiff*

10. I find that the Defendant must immediately leave the marital home located at 18 6th Avenue, Bluffton, South Carolina.
11. I find that the Plaintiff shall take immediate possession of the marital home until further Order of this Court.
12. I find that the Defendant must immediately turn over possession of Toyota Corolla 2009 to the Plaintiff.
13. I find that neither party will expose the child to violent conduct.
14. I find that neither party will make or allow disparaging comments about the other parent/party or his/her family in the presence of the child.
15. I find that neither party will discuss this case with or in the presence of the child.
16. I find that neither party will expose the child to any illegal or criminal activity.
17. I find that both parties are prohibited from using each others and the minor child's Social Security Numbers.
18. I find that the parties are mutually restrained from harassing, interfering or bothering the other at either school, place of employment, or place of residence.
19. I find that the parties are mutually restrained from coming about each other more than 100 feet except to exchange the minor child for visitation.
20. I find that both parties will make themselves available for phone communication with the other for the purpose of discussion pertaining solely to the child, provided however, that neither parent harass or burden the other with excessive or abusive telephone calls or any such other nonproductive communication.
21. I find that the neither party will remove the child from South Carolina without a Court Order.



22. I find that a Guardian *Ad Litem* shall be appointed in this case. I appoint Attorney Regina M. Strickroth.
23. I find that a Sequestrator shall be appointed in this case. I appoint Attorney Thad Vincent to investigate:
- a. All properties owned by both parties in the last ten (10) years;
 - b. All bank accounts owned by both parties in the last ten (10) years;
 - c. The Defendant's bankruptcy proceedings that was filed in Atlanta, GA;
 - d. Any and all records of opening of lock boxes owned by both parties;
 - i. Both parties are prohibited from opening lock boxes as of June 25, 2009;
 - e. Possible Medicaid and Food Stamp Fraud;
24. The parties are granted full pretrial discovery pursuant to the South Carolina Rules of Civil Procedure.
25. I find that the remainder of the matters shall be held in abeyance until a Final Hearing can be held.

CONCLUSIONS OF LAW

1. I CONCLUDE THIS Court has subject matter and personal jurisdiction to hear these matters.
2. I conclude that venue is proper in Beaufort County, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, PENDENTE LITE:

A. The Plaintiff is granted temporary sole custody of the minor child. The Plaintiff is the primary physical custodian with the Defendant having every Saturday between 9 A.M. and



6 P.M visitation. The exchange shall take place at Sonic Drive-In parking lot in Bluffton, SC. The Plaintiff shall have temporary custody of the minor child at all other times.

B. Neither party shall pay child support at this time until further Order by this Court.

C. The Defendant is ordered to turn over the engagement ring to the Plaintiff.

D. The Defendant is ordered to immediately relinquish possession of the marital home located at 18 6th Avenue, Bluffton, South Carolina, to the Plaintiff until further Order of this Court.

E. The Defendant is ordered to immediately turn over possession of Toyota Corolla 2009 to the Plaintiff.

F. Neither party will expose the child to violent conduct.

G. Neither party will make or allow disparaging comments about the other parent/party or his/her family in the presence of the child.

H. Neither party will discuss this case with or in the presence of the child.

I. Neither party will expose the child to any illegal or criminal activity.

J. Both parties are prohibited from using each others and the minor child's Social Security Number.

K. The parties are mutually restrained from harassing, interfering or bothering the other at either place of employment or place of residence.

L. The parties are mutually restrained from coming about each other more than 100 feet except to exchange the minor child for visitation

M. Both parties will make themselves available for phone communication with the other for the purpose of discussion pertaining solely to the child, provided however, that neither parent harass or burden the other with excessive or abusive telephone calls or any such other nonproductive communication.

N. Neither party will remove the children from South Carolina without a Court Order.

O. A Guardian Ad Litem is appointed in this case. I appoint Attorney Regina M. Strickroth.

P. I find that a Sequestrator is appointed in this case. I appoint Attorney Thad Vincent to investigate:

- a. All properties owned by both parties in the last ten (10) years;
- b. All bank accounts owned by both parties in the last ten (10) years;
- c. The Defendant's bankruptcy proceedings that was filed in Atlanta, GA;
- d. Any and all records of opening of lock boxes owned by both parties;
 - i. Both parties are prohibited from opening lock boxes as of June 25, 2009;
- e. Possible Medical and Food Stamp Fraud;

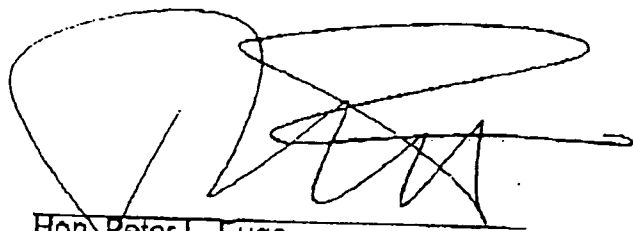
Q. The parties are granted full pretrial discovery pursuant to the South Carolina Rules of Civil Procedure.



R. I find that the remainder of the matters shall be held in abeyance until a Final Hearing can be held.

S All other matters shall be held in abeyance until the Final Hearing in this matter.

AND IT IS SO ORDERED!

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Hon. Peter L. Fuge
Presiding Family Court Judge

June 25, 2009
Beaufort, South Carolina

A small, stylized handwritten mark or signature at the bottom center of the page, possibly initials.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-07-2546

ORDER DISMISSING COMPLAINT
AS TO DEFENDANT LILING SUN

V.

OLESYA MATYUSHEVSKY,)
CITIZENS OPPOSING DOMESTIC))
ABUSE, CHRISTINE VARG and)
LILING SUN,)
Defendants.)

Hearing Date: October 19, 2011
 Presiding Judge: The Honorable Carmen T. Mullen
 Attorney for the Plaintiff: Pro Se
 Attorney for the Liling Sun : J. Sam Scoville, Esq.
 Court Reporter: Deborah E. Everett

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CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter came before the Court on Defendant Liling Sun's Motion to Dismiss. Present at the hearing were Plaintiff Joseph Sun, Pro Se, and defendant, Liling Sun, and her attorney, J. Sam Scoville, of the Beaufort County Bar. Defendant Sun presented three documents to the Court and asked that the Court take judicial notice of them. The documents were: a. the divorce decree from Sun v. Sun et al., Case No.: 2009-DR-07-0628, attached hereto as Exhibit A; b. Joseph C. Sun's Motion and Rule to Show Cause, with attachments, filed in Sun v. Sun et al., Case No.: 2009-DR-07-0628 and attached hereto as Exhibit B; and c. an order of the Family Court granting Joseph C. Sun's Motion and Rule to Show Cause and attached hereto as Exhibit C. Finding Defendant Liling Sun's request proper, the Court took judicial notice of said documents.

P. LO

Page 1 of 5

Defendant Liling Sun moves to dismiss this action on the grounds ^{a.} that this Court lacks subject matter jurisdiction because the Plaintiff's claims for relief are within the exclusive jurisdiction of the family court; b. that there is a prior pending action between Plaintiff and Defendant Liling Sun for some or all of Plaintiff's claims; and c. the Complaint states insufficient facts to constitute a cause of action.

Upon hearing from the parties present at the hearing, reviewing the Complaint, and the Family Court filings attached hereto, this Court finds that this matter should be dismissed based on the following findings of fact and conclusions of law.

Analysis

1. Plaintiff filed his Complaint June 15, 2011. He appears to allege fraud, adultery, forgery, wrongful arrest and incarceration, libel and slander, burglary, theft, trespass, and conspiracy.
2. All of the factual allegations in the present Complaint pre-date the Family Court's divorce order.
3. The first paragraph of the divorce decree states in pertinent part that "the Plaintiff commenced this action for divorce, child custody, equitable of marital property, and related relief against the Defendant Joseph Sun."
4. The last page of the Family Court's order of divorce states in pertinent part "the parties' agreements as set forth herein constitute fair and equitable resolutions of all the issues before this court."
5. Paragraph three (3) of the first agreement incorporated into the Family Court's order provides for equitable division of property. Specifically, it provides for Liling Sun to execute and deliver quit-claim deeds to certain real-estate in exchange for \$75,000.00.

The real estate exchanged pursuant to this order was the same real-estate Plaintiff Joseph C. Sun claims was trespassed on and burglarized pending the parties' divorce. Plaintiff Joseph C. Sun's claim of forgery is based on his claim that Defendant Liling Sun forged a deed regarding this same real-estate prior to the divorce being initiated.

6. On December 20, 2010, following the divorce, Joseph Sun filed Exhibit B hereto, the Motion for Rule to Show Cause why Liling Sun should not be held in contempt of court for violating the Family Court's Order.
7. In his affidavit in support of the Motion for Rule to Show Cause Mr. Sun states that the basis for his motion is that Liling Sun improperly removed personal property from the marital home when she vacated it.
8. Exhibit C hereto indicates that the Honorable Robert S. Armstrong, family court judge, held a hearing on Joseph Sun's motion on May 4, 2011, and issued an order filed May 25, 2011. Judge Armstrong's order provides, among other things, that Liling Sun was to return certain property that she admittedly had in her possession, and which she should not have taken.
9. It was less than one month later, on June 15, 2011, that Joseph Sun filed the present case in the Court of Common Pleas.
10. "The family court has exclusive jurisdiction . . . to hear and determine . . . marital litigation between the parties . . . for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage . . ." S.C. Code Ann. § 63-3-530 (1976) (as amended)

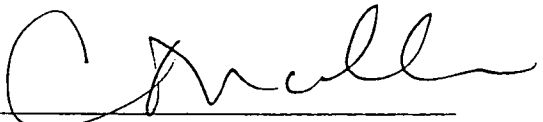
11. Dismissal pursuant to 12(b)(8) of the S.C.R.C.P. is appropriate when the parties, subject matter, and remedies are precisely or substantially the same. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 106, 674 S.E.2d 524, 532 (2009).
12. "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed 'to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct.App. 2001) "The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief." *Id.*
13. Plaintiff's claims for fraud and forgery are defective for failing to allege that he suffered injury by relying on what he claims were misrepresentations. He thus states insufficient facts to constitute a cause of action for fraud. See *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007) ("the hearer's consequent and proximate injury" is an element of fraud)
14. Plaintiff's adultery claim fails for stating insufficient facts to constitute a cause of action. Adultery is a crime and ground for divorce in South Carolina, not a civil cause of action. S.C. Code Ann. §§ 16-15-70 and 20-3-10 (1976)
15. To the extent Plaintiff makes a claim for civil conspiracy, it is defective for failing to allege special damages. Failure to plead special damages, separate and independent from other wrongful acts alleged in the Complaint, requires dismissal of claim for civil conspiracy. *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 167-68, 708 S.E.2d 218, 222-23 (Ct.App. 2011)
16. To the extent Plaintiff's claims for wrongful arrest and incarceration could be deemed claims for malicious prosecution, they are defective for failing to allege the proceedings

have been terminated in his favor. See *Ruff v. Eckerd's Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975)(holding plaintiff must show, among other things, that proceedings instituted by defendant against plaintiff were terminated in plaintiff's favor)

17. Plaintiff's claims in this case for trespass, adultery, theft, burglary, conspiracy, wrongful arrest, libel, slander, and fraud involve issues which were part of the marital litigation. Thus, even had Plaintiff stated sufficient facts to constitute a cause of action for these claims, they should be dismissed against Liling Sun on the ground that there is another action pending between these parties for the same claims.
18. Finally, Plaintiff's claims for trespass, adultery, theft, burglary, and fraud should also be dismissed for being within the exclusive jurisdiction of the family court.

Now therefore, Defendant Liling Sun's Motion to Dismiss is hereby granted.

It is so ordered.


The Honorable Carmen T. Mullen

Dated: 11 / 8 / 11

P. 15

STANDARD OF REVIEW

I. CODA Defendants' Motion To Dismiss

A motion to dismiss "must be based solely on the allegations set forth in the complaint and [the Court] must presume all well-plead facts to be true." Gresette v. S.C. Elec. and Gas Co., 370 S.C. 377, 378-79, 635 S.E.2d 538, 538 (2006). When considering a motion to dismiss, "[t]he question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). At any stage of the proceeding, however, the Court may take judicial notice of adjudicative facts. These include those facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Rule 201, South Carolina Rules of Evidence. As such, the Court, in addition to considering the allegations of the Complaint, may take judicial notice of previously filed orders of the Beaufort County Family Court.

II. Plaintiff's Motion to Amend Complaint

South Carolina Rule of Civil Procedure 15(a) provides, in pertinent part, that "a party may amend his pleading . . . by leave of court . . . and leave shall be freely given when justice so requires and does not prejudice any other party." S.C. R. Civ. Pro. 15(a) (Supp. 2003). The decision whether to grant a motion to amend is at the discretion of the trial judge. Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). Furthermore, a motion to amend may be denied if it is clear that the proposed amendment is obviously frivolous and without substantive merit. Collins, et al. v. Sigmon, 299 S.C. 464, 467, 385 S.E.2d 835, 836, n.1 (1989).

ANALYSIS

Claims Against the CODA Defendants

South Carolina law protects an attorney from being sued by third parties for actions taken in the representation of a client. Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). See also, Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601, 602 (1995). "In his professional capacity the attorney is not liable [to non-clients] . . . for injury allegedly arising out of the performance of his professional activities." Garr, 287 S.C. at 529, 339 S.E.2d at 889. The reason for the rule of immunity is simple: "[a]ttorneys must be free to act and advise their clients without constant fear of harassment from lawsuits." Garr, 287 S.C. at 529, 339 S.E. 2d at 889. This is especially true in the family courts where emotions often run high.

The pleadings demonstrate that Oleysa Matyushevsky, an employee of CODA, represented Liling Sun in her divorce case against the Plaintiff and that Christine Varg, also a CODA employee, acted as her legal assistant in the matter. The Complaint generally alleges that the CODA Defendants committed various tortious acts in the course of advocating for and advising Liling in the family court matter. Even assuming the facts alleged to be true and viewing them in the light most favorable to the Plaintiff, the Court concludes that the Complaint fails to state facts sufficient to constitute a cause of action. First, the claims against the CODA Defendants relate to alleged acts that were performed in the course of the legal representation of a client and are barred by the rule of Garr and Stiles. Second, many of the issues raised were decided in the family court, and the doctrine of collateral estoppel precludes the Plaintiff from relitigating them.

Therefore, the action is dismissed as to Defendant CODA and Defendant Matyushevsky and, with the exception of one claim, as to Defendant Varg. Viewing the factual allegations in the light most favorable to Plaintiff, the Court concludes that he may have stated facts sufficient to constitute a cause of action against Defendant Varg only in Paragraphs 27 and 28 of the Complaint. The Court will allow Plaintiff to file an Amended Complaint against Defendant Varg only setting forth facts sufficient to constitute a cause of action for the claim now asserted in those paragraphs providing he does so within fifteen (15) days of receipt of this Order. Otherwise, the entire action shall be dismissed as to Defendant Varg also.

Plaintiff's Proposed Amended Complaint

The Honorable Carmen T. Mullen has previously dismissed with prejudice all claims against Liling Sun by order dated November 8, 2011. To the extent Plaintiff purports, by his Motion to Amend, to assert claims against Liling Sun, his motion is denied. As to the CODA Defendants, after careful review of the proposed amended complaint, the Court finds that there is substantively no difference between those claims and the original claims made by the Plaintiff. The only new allegation against the CODA Defendants, contained in Paragraphs 33 and 34 of the proposed amended complaint, is that they conspired with Liling to steal the original of the prenuptial agreement between him and Liling and to hide the fact one existed from the family court.¹ In cases involving a conspiracy claim against an attorney, a plaintiff must allege and prove that the attorney breached some independent duty or acted in her own personal interests outside the scope of the representation. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995); Moore v. Weinberg, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). There is no such allegation

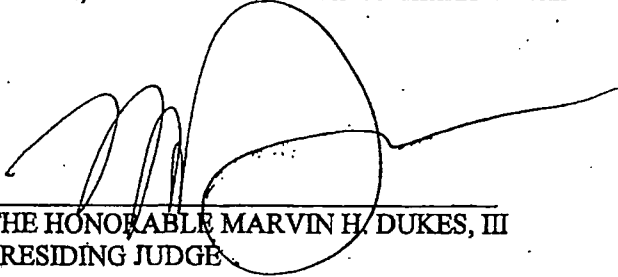
¹ Plaintiff admitted at the hearing in this matter that he did present a copy of the prenuptial agreement to the family court.

here, and the Plaintiff has proffered no basis for such an allegation. Thus, the Court denies the Motion to Amend since the proposed amendment is obviously frivolous and without substantive merit.

NOW, THEREFORE, IT IS ORDERED THAT:

- 1) All claims against Defendant Matyushevsky are dismissed with prejudice.
- 2) All claims against Defendant CODA are dismissed with prejudice.
- 3) All claims against Defendant Varg, with the exception of the claim raised in Paragraphs 27 and 28 of Plaintiff's Complaint, are dismissed with prejudice.
- 4) The Plaintiff's Motion to Amend is denied.
- 5) The Plaintiff may file an Amended Complaint raising only the claim against Defendant Varg made in Paragraphs 27 and 28, provided he does so within fifteen (15) days of receipt of this Order.
- 6) If the Plaintiff does not file an Amended Complaint against Defendant Varg within fifteen (15) days from receipt of this Order, then this matter shall be dismissed with prejudice in its entirety.

AND IT IS SO ORDERED.



THE HONORABLE MARVIN H. DUKES, III
PRESIDING JUDGE

BEAUFORT, SC
March 7, 2012

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2011-CP-07-2546

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JAN ROSENBAU
CLERK OF COURT
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Generally, the party opposing summary judgment should have a full and fair opportunity to conduct discovery before summary judgment is granted. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). “Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is ‘not merely engaged in a fishing expedition.’” *Id.*

Given the prior ruling of this Court, the only issue of material fact is whether Varg participated with Liling in the alleged burglary of the Knowles Island house. The affidavits of Varg and Liling are the only evidence in the record on this issue and establish her lack of participation as an undisputed fact. Plaintiff has not identified what specific discovery he might conduct to show this is not true other than his desire to depose Varg and Liling and cross-examine them. There is no reason, however, to believe that these witnesses will recant their prior sworn testimony upon cross-examination. Moreover, Rule 56 of the South Carolina Rules of Civil Procedure specifically recognizes “supporting affidavits” as a proper basis for summary judgment.

Further, the Court notes that this case is one year old, having been filed on June 15, 2011, and Plaintiff has not pursued discovery to date. He has not served any interrogatories or requests for production and has not noticed any depositions in accordance with Rule 30 of the South Carolina Rules of Civil Procedure. The Court will not delay the case based on Plaintiff’s unsubstantiated hopes that he might find something to dispute the affidavits. Therefore, the Court concludes that, under the particular circumstances of this case, Plaintiff has not demonstrated a likelihood that discovery would uncover additional relevant evidence. As such, consideration of the summary judgment motion is not premature, and the Court denies the Motion for Continuance.

MOTION FOR SUMMARY JUDGMENT

The prior order of this Court dismissed all claims against Defendants Olesya Matyushevsky and Citizens Opposed to Domestic Abuse as well as all claims against Varg except one claim related to her alleged participation in a break-in of the house located at 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina. The Court allowed Plaintiff leave to file an amended complaint against Varg involving this claim, which he did on March 26, 2012.

In his Amended Complaint, Plaintiff alleges that, in September 2010 and at least one time afterwards, his ex-wife, Liling Sun, and Varg committed several burglaries of the Knowles Island house by breaking a rear window, entering the house and stealing several items of personal property, various legal papers, and the hard drive to his computer. Plaintiff seeks the return of the stolen property and damages for injury to the house and to other personal property resulting from the alleged break-in.¹

In support of her Motion for Summary Judgment, Varg has submitted her own affidavit and that of Liling. In her affidavit, Liling admits that, on or about September 16, 2010, she did enter the house and remove certain items, including papers, which she claims belonged to her. Liling states, however, that Varg was not with her. Varg swears in her affidavit that she has never been on the Knowles Island property or inside the house there and that she specifically did not accompany Liling to the house on September 16, 2010.

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that judgment shall be rendered when there is no genuine issue of material fact and the moving party is entitled to a

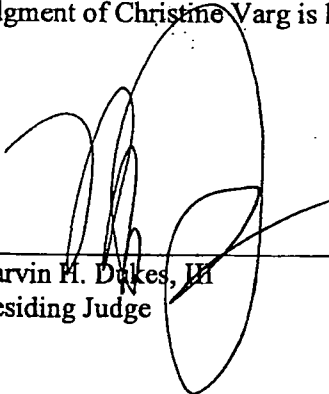
¹ Despite the Court's prior ruling, Plaintiff alleges in the Amended Complaint that attorney Matyushevsky and her paralegal Varg conspired with Liling and advised her to commit the burglaries on the false premise that the house and its contents were marital property. These claims, however, including those against Varg, were dismissed because attorneys are not liable to non-clients for injuries allegedly arising out of the performance of their professional activities for clients. *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (Ct. App. 1986).

judgment as a matter of law. *Smith v. TH Snipes & Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439 (1991). To avoid summary judgment, the non-moving party must submit a scintilla of evidence to demonstrate that there is a genuine issue of material fact. *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). The proper purpose of summary judgment is to dispose of cases which do not require a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

Rule 56 speaks to whether there is a genuine issue of material fact. What property was taken and whether the house and allegedly stolen personal property were or were not marital property are not facts material to Plaintiff's remaining claim. The issue is whether Varg committed the alleged burglary with Liling, and the undisputed evidence is that she did not. Plaintiff has not presented even a scintilla of evidence that Varg was a participant in the alleged break-in of the Knowles Island house and has not identified where he might likely obtain such evidence. Therefore, there is no genuine issue of material fact, and Varg is entitled to summary judgment.

NOW, THEREFORE, IT IS ORDERED that Plaintiff's Motion for Continuance is hereby denied and the Motion for Summary Judgment of Christine Varg is hereby granted.

AND IT IS SO ORDERED.



Marvin H. Dukes, III
Presiding Judge

BEAUFORT, SC
July 11, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT

LILING SUN,

Plaintiff,

Vs.

JOSEPH SUN and
AH TSAO SUN,

Defendants.

ORDER

Case No: 2009-DR-07-628

FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

2011 MAY 25 AM 11:29

Date of Hearing: May 4, 2011
Judge: Robert S. Armstrong
Plaintiff's Attorney: Olesya Matyushevsky
Defendants' Attorney: Kenneth L. Tootle
Court Reporter: Debbie Anderson

This matter came before the Court on May 4, 2011 pursuant to that certain Rule To Show Cause brought by the Defendants and directed to the Plaintiff to show cause why she should not be held in contempt of court. The Plaintiff was present at the hearing and represented by her attorney Olesya Matyushevsky. Defendant Joseph Sun was also present and represented by his attorney Kenneth L. Tootle.

The Defendants allege, among other things, that the Plaintiff is in violation of the Decree Of Divorce entered by this Court on October 13, 2010 by removing certain personal property from the premises located at 18 6th Avenue, Bluffton, South Carolina and 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina. In this regard the Defendants cite the wording in Paragraph I (A) (3) of the Settlement Agreement approved by the Court and made the Order of the Court in the divorce action. The Plaintiff denies the allegations.

At the call of the case written stipulations were presented to the Court and are attached hereto as Court Exhibit 1. Originally on three sheets of yellow note pad paper the Defendants list items of personal property they claim are missing from the premises and

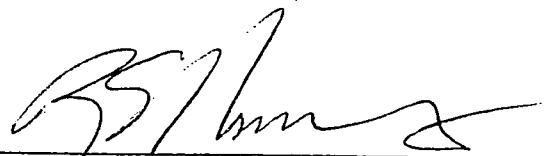
Certified - A True Copy
John A. Robinson
Clerk of Court
Beaufort County SC

are in the possession of the Plaintiff or were removed from the premises by her. On a single sheet of white note pad paper the Plaintiff acknowledges having 1 Loveseat, 1 end table and 1 Mongoose bicycle.

From the stipulations the Court enters the following Order:

1. Within seven (7) days the Plaintiff shall return the loveseat, end table and Mongoose bicycle to Defendant Joseph Sun.
2. As expeditiously as possible Mr. Tootle, or his designee, shall conduct a search of the Plaintiffs apartment, making an inventory of any items listed by Mr. Sun as missing from the Bluffton property or the Knowles Island property. Mr. Tootle shall advise Ms. Matyushevsky of the time and date the search will take place.
3. In the event either party deems it necessary, a member of the Beaufort County Sheriff's Department shall accompany Mr. Tootle or his designee to Ms. Sun's apartment and remain through the search.

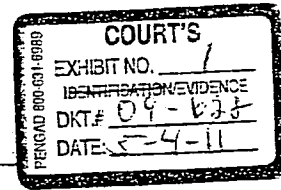
AND IT IS SO ORDERED.



ROBERT S. ARMSTRONG
Judge, Family Court for the
Fourteenth Judicial Circuit

Beaufort, South Carolina
May 25, 2011

69-628



- 1 Loveseat
- 1 End Table
- 1 Mongoose bicycle

Grave to Bluffton PD - Off. Hehda
files

Liking gave him box of keys 10/16/10

Bluffton

Replace Safe - No

Love Seat - Yes

2 end tables - 1 ^{end} table Living Room

2 lamps - No

Coffee Table ~~Yes~~ No

Painting - Antique Chinese silk framed

1. Hawk painting No

2. Fisherman in boat No

3. Chinese character painting describing hawk painting NO

CLOSET: from walk-in closet

- 2 book of stamp collection No

- ivory statue of Chinese goddess No

- incense burner - ivory No

- 1 Buddha statue No

- 3 crystal bottles (formerly incense burners) No

- box of coin collection (heavy box) No

- Nikon 3 camera cameras No

Knowns Is.

Has a box
of papers etc

Legal files from safe & file cabinets
& financial files
- checkbooks from trust accounts

→ Original title to construction eg. boat,
truck, car Joe drives now.

Keys from keybox (to the machines, boat,
his car, etc.) - She gave him

Original deeds

→ Original titles to his truck & boat &
his car

US Savings bonds No

Gold chain & ear-ring No

Diamond ring No

Personal papers - divorce, etc. - from
2 ex-wives

5 gold coins, 2 silver coins No
Canadian money No

Bedroom

- sealy p. mattress & boxspring - No
- any clothing if he/she may have No

Office :

- check books & iters re: accounts No
- legal files No
various legal cases & research material No
- Family trust papers No
- computer hard drive No
- CDs, DVDs No

Garage :

- Mongoose bicycle - mms. - No

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LILING SUN,

Plaintiff

v.

JOSEPH SUN,

Defendant.

IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT

FILE BOOK NO. 09-DR-07-00628

ORDER

FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

2010 MAR 12 AM 10:56

Date of Hearing:	March 2, 2010
Presiding Judge:	Hon. Robert S. Armstrong
Plaintiff's Attorney:	Olesya Matyushevsky, Esquire
Defendant's Attorney:	Kenny L. Tootle, Esquire
Sequstrator:	Thad H. Vincent, Esquire
Court Reporter:	Deborah A. Anderson

This matter was commenced pursuant to Plaintiff's filing of a verified Petition for Citation for Contempt on January 12, 2010, in Beaufort County, South Carolina. The hearing was scheduled on January 26, 2010, but was continued by the consent of the attorneys. The attorney for the Defendant was previously scheduled to appear in another county for two separate hearings. Honorable Robert S. Armstrong granted the continuance. Subsequently, the Plaintiff filed an Amended Notice of Motion and Motion for Contempt on February 17, 2010. The Defendant was given a proper notice of this Hearing by leaving a copy of an Amended Notice of Motion and Motion for Contempt in a prominent, visible location at what is known to the parties as the "Knowles Island Property", located at 43 Broadview Drive, Ridgeland, SC 29936.

Present at the Hearing were the Plaintiff, with her attorney of record, Olesya Matyushevsky, Esquire, Defendant, with his attorney of record, Kenny L. Tootle, Esquire, and Sequestrator, Thad H. Vincent, Esquire.

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John A. Pearson
Clerk of Court
Beaufort County SC



Each party testified. I examined each party to the extent necessary. Having reviewed the evidence submitted as well as listening to the parties' testimony, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. I find that Defendant is in willful violation of the Temporary Order, dated June 25, 2009, by not immediately turning the possession of the 2009 Toyota Corolla over to the Plaintiff.
2. I find that because the Defendant turned the possession of the 2009 Toyota Corolla over to the Plaintiff on or about January 20, 2010, Defendant is not sanctioned.
3. I find that all issues regarding the depreciation of the 2009 Toyota Corolla must be handled at the final hearing.
4. I find that the Defendant must return the ^{alleged TSM} engagement ring to the Plaintiff by 5 p.m. on March 3, 2010.
5. I find that the Plaintiff cannot dispose of the ^{alleged TSM} engagement ring until further order of this court.
6. I find that Defendant is in willful violation of the Order of Plaintiff's Notice of Motion and Motion to Alter or Amend *Pendente Lite* Order, Pursuant to SCRCF Rule 59, dated October 19, 2010, for not paying child support.
7. I find that Defendant is in arrears of child support in the amount of \$ 110.00 as of March 2, 2010, by March 15, 2010 or turn himself into the Beaufort County Detention Center for thirty (30) days.

8. I find that the Defendant is in willful violation of the Temporary Order, dated June 25, 2009, and Order, dated August 4, 2009, by not leaving the marital home located at 18 Sixth Avenue, Bluffton, South Carolina.
9. I find that the Defendant is restrained from going to the home located at 18 Sixth Avenue, Bluffton, SC.
10. I find that Defendant shall serve six (6) months in Beaufort County Detention Center, if the Defendant enters the marital home for any reason commencing on March 2, 2010.
11. I find that to enforce the sentence, the Plaintiff shall file an affidavit with the Beaufort County Family Court.
12. I find that the Defendant is in violation of the Temporary Order, dated June 25, 2009, by abusing phone communication with the Plaintiff.
13. I find that any and all phone communications between the parties are suspended until further order of this Court.
14. I find that the Defendant is in violation of the Order, dated September 10, 2009, by contacting Plaintiff's counsel, Olesya Matyushevsky, while represented by an attorney.
15. I find that the Defendant shall serve six (6) months in Beaufort County Detention Center, if the Defendant contacts Plaintiff's counsel, Olesya Matyushevsky, in any way, except communications through Defendant's counsel, Kenny L. Tootle, Esquire.
16. I find that to enforce the sentence, the Plaintiff shall file an affidavit with the Beaufort County Family Court asking this Court.

17. I find that the exchange for visitation should take place at Beaufort County Sheriff's Department parking lot at 2001 Duke Street, Beaufort, South Carolina.

CONCLUSIONS OF LAW

1. I CONCLUDE THIS Court has subject matter and personal jurisdiction to hear these matters.
2. I conclude that venue is proper in Beaufort County, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

A. The Defendant is in willful violation of the Temporary Order, dated June 25, 2009, by not immediately turning the possession of the 2009 Toyota Corolla over to the Plaintiff.

B. The Defendant is not sanctioned because he turned possession of the 2009 Toyota Corolla to the Plaintiff on or about January 20, 2010.

C. Any and all issues regarding the depreciation of the 2009 Toyota Corolla must be handled at the final hearing.

D. The Defendant is ordered to turn the engagement ring over to the Plaintiff by 5 p.m. on March 3, 2010. *alleged BSM*

E. The Plaintiff is ordered not to dispose of the engagement ring until the further order of this court. *alleged BSM*

F. The Defendant is in willful violation of the Order of Plaintiff's Notice of Motion and Motion to Alter or Amend *Pendente Lite* Order, Pursuant to SCRCF Rule 59, dated October 19, 2010, for not paying child support.

G. The Defendant is ordered to pay the full amount of the arrears by March 15, 2010 or turn himself into the Beaufort County Detention Center for thirty (30) days.

H. The Defendant is in willful violation of the Temporary Order, dated June 25, 2009, and Order, dated August 4, 2009, by not leaving the marital home located at 18 Sixth Avenue, Bluffton, South Carolina.

I. The Defendant is restrained from going to the home located at 18 Sixth Avenue, Bluffton, SC.

J. The Defendant is ordered to serve six (6) months in Beaufort County Detention Center, if the Defendant enters the marital home for any reason commencing on March 2, 2010.

K. The Plaintiff shall file an affidavit with the Beaufort County Family Court asking this Court to enforce the sentence.

L. I find that the Defendant is in violation of the Temporary Order, dated June 25, 2009, by abusing phone communication with the Plaintiff.

M. Any and all phone communications between the parties are suspended until further order of this court.

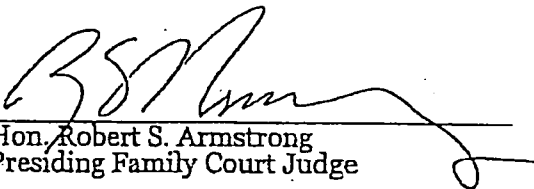
N. The Defendant is in violation of the Order, dated September 10, 2009, by contacting Plaintiff's counsel, Olesya Matyushevsky, while represented by an attorney.

O. The Defendant shall serve six (6) months in Beaufort County Detention Center, if the Defendant contacts Plaintiff's counsel, Olesya Matyushevsky, in any way, except communications through Defendant's counsel, Kenny L. Tootle, Esquire.

P. The Plaintiff shall file an affidavit with the Beaufort County Family Court asking this Court to enforce the sentence.

Q. The exchange for visitation should take place at Beaufort County Sheriff's Department parking lot at 2001 Duke Street, Beaufort, South Carolina.

AND IT IS SO ORDERED!


Hon. Robert S. Armstrong
Presiding Family Court Judge

March 12, 2010
Beaufort, South Carolina

09-628

Certified - A True Copy

Spencer A. Rose
Clerk of Court
Beaufort County SC

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

LILING SUN,

Plaintiff

v.

JOSEPH SUN,

Defendant.

IN THE FAMILY COURT

FOURTEENTH JUDICIAL CIRCUIT

ORDER

DOCKET NO. 09-DR-07-00628

2010 JUN 21 AM 2:07
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

Plaintiff's Attorney: Olesya Matyushevsky
Defendant's Attorney: Kenny L. Tootle
Guardian ad Litem: Regina Strickroth

Hearing Date: May 18, 2010
Judge: Hon. Robert S. Armstrong
Court Reporter: Debbie Anderson

This matter was commenced pursuant to Plaintiff's filing of a verified Contempt Complaint on March 30, 2010 and a Motion to Waive Mediation on April 29, 2010. Defendant was given proper notice of this hearing as is evidenced by the affidavits of service contained in this file. Defendant also filed a Rule to Show Cause in this matter that was scheduled to be heard at this time; however, Plaintiff was never served and this Motion will not be heard. Prior to this hearing, on receipt of Defendant's Motion for Continuance, I initiated a telephone conference with counsel for the Parties, where I held that the hearing on this day will not address Plaintiff's allegations of financial fraud by Defendant as Defendant's counsel advised me that he has not had sufficient time to prepare.

Present at the hearing were Plaintiff, Liling Sun, with her attorney of record, Olesya Matyushevsky, Esquire, Defendant, Joseph Sun, with his attorney of record, Kenny L. Tootle, Esquire, and Guardian ad Litem, Regina Strickroth, Esquire.

Based upon the testimony of the parties, testimony of the witnesses, and the evidence presented, I make the following Findings of Fact and Conclusions of Law:



FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That on March 10, 2010, Plaintiff, along with officers from the Bluffton Police Department, went to the marital home located at 18 Sixth Avenue, Bluffton, SC.
2. That prior to Plaintiff entering the home, Bluffton Police officers inspected the premises to ensure Plaintiff's safety.
3. That the Defendant, Mr. Sun, was found to be hiding in the garage.
4. That at trial, Mr. Sun admitted to hiding in the garage.
5. That on June 25, 2009, this court ordered that "the Defendant must immediately leave the marital home located at 18 6th Avenue, Bluffton, South Carolina." Then, on August 28, 2009, the court ordered that Mr. Sun "is restrained from going to the home located at 18 Sixth Avenue, Bluffton, SC unless requested by the sequestrator."
6. I find that plaintiff has established that the Defendant has violated the previous Order of the Court by clear and convincing evidence by proving that Mr. Sun went to the home located at 18 Sixth Avenue, Bluffton, SC.
7. Mr. Sun is in contempt. He is sentenced to six months in the Beaufort County Detention Center for criminal contempt of court.
8. That the Bluffton Police Department issued a No Trespass Order to Mr. Sun after finding him in the garage.
9. That Mr. Sun returned to the home later that day and was arrested. He was released from jail on March 16, 2010.
10. That the Plaintiff returned to the marital home on March 17, 2010, and discovered the lights on, broken glass in her and her child's clothing, and a note reading "You Die" in Chinese pinned to the mattress.

11. That on or about March 17, 2010 Sergeant Christian Gonzales of the Bluffton Police Department asked Mr. Sun to come to the station. He told him the purpose was to help him retrieve his truck that had been towed after it had been found in the neighborhood of the marital residence. Sergeant Gonzales ^M ~~Mirandized~~ ^{BSA} Mr. Sun and began questioning him after he agreed to talk.

12. That this questioning was recorded on video and introduced into evidence.

13. That after viewing the video, I find that the Defendant admitted entering the marital residence on March 16 and/or March 17, 2010, after he was released from jail.

14. I further find that Mr. Sun admitted writing and leaving the note reading "You Die" in Chinese.

15. I find that Mr. Sun made these statements freely and voluntarily and they were not the product of coercion. Even though Sergeant Gonzales made false statements to him, I find that this did not result in conduct so egregious as to overcome Mr. Sun's free will.

16. On March 12, 2010, this court signed an order holding Mr. Sun in civil contempt for not leaving the marital home located at 18 Sixth Avenue, Bluffton, SC. He was sentenced to six months in the Beaufort County Detention Center if he entered the marital home for any reason in the future. Thus, he was allowed to purge his contempt by future compliance of the court's order.

17. The Plaintiff has established by clear and convincing testimony that Mr. Sun has violated the terms of this order by entering the home. The Defendant chose not to purge his civil contempt. Therefore, the sanction previously imposed shall be carried out.

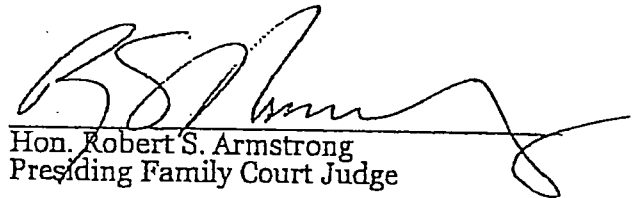
Mr. Sun is sentenced to six months in the Beaufort County Detention Center. This sentence is consecutive to the sentence already issued.

18. The Defendant alleges that this sentence violates double jeopardy since he was prosecuted in Municipal Court and held in contempt there for violating a condition of his bond for the same conduct.

19. The Court rejects this argument since Defendant is being sanctioned for civil contempt by this court. He was given means to purge an earlier finding of contempt, yet he chose not to do so.

20. The Defendant requested and Appeal Bond. This is denied.

AND IT IS SO ORDERED!


Hon. Robert S. Armstrong
Presiding Family Court Judge

June 21, 2010
Beaufort, South Carolina

09-628

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
LILING SUN,)
Plaintiff,)
Vs.)
JOSEPH SUN and)
AH TSAO SUN,)
Defendants.)

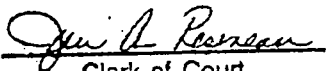
IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT

DECREE OF DIVORCE

Case No. 2009-DR-07-628

2010 OCT 13 PM 5:35
BEAUFORT COUNTY
CLERK OF COURT

Certified - A True Copy


Clerk of Court
Beaufort County SC

Plaintiff's Attorney: Olesya Matyushevsky
Defendant's Attorney: Kenny L. Tootle
Guardian *ad Litem*: Regina Strickroth
Sequestrator: Thad H. Vincent

Hearing Date: September 1, 2010
September 29, 2010
Judge: Hon. Robert S. Armstrong
Court Reporter: Debbie Anderson

The Plaintiff commenced this action for divorce, child custody, equitable division of marital property and related relief against Defendant, Joseph Sun, on April 21, 2009 by filing her Summons and Complaint in the Office of the Clerk of Court for Beaufort County. Defendant, Joseph Sun, was personally served with the pleadings as is shown from the Affidavit of Service on file with the Court. Defendant, Joseph Sun, duly filed and served his responsive pleadings to the Complaint. Shortly thereafter, Defendant was represented by attorney, Beth Ann Gilleland-Prince. By subsequent order of this Court, Kenneth L. Tootle was substituted as attorney for Defendant, Joseph Sun. Mr. Tootle also appears as attorney for Ah Tsao Sun.

Plaintiff made claim through the South Carolina Marital Properties Act to an interest in certain properties alleged by her to be marital property, but being titled to Defendant Joseph Sun's mother, Ah Tsao Sun. As a result thereof this Court issued its Order making Ah Tsao Sun a third party defendant in this action.

The Court conducted a final hearing in this matter commencing September 1, 2010 and continuing September 29, 2010. Prior to taking testimony on September 1, 2010, the

COPY

Court undertook efforts to reconcile the parties, which efforts were unsuccessful. Testimony was thereafter taken for the remainder of the day and, not having reached a conclusion, the hearing was continued to September 29, 2010. Upon the case being reconvened on September 29, 2010, the Court was informed by the attorneys that a settlement had been reached between Plaintiff and Defendant, Ah Tsao Sun, which resolved all the property issues arising out of this action. The Settlement Agreement has been reduced to writing and signed by both, Plaintiff and Defendant, Ah Tsao Sun.

The Court questioned Plaintiff regarding the Settlement Agreement. Plaintiff advised the Court that she understood the nature and extent of the marital property involved in this litigation, and she felt that the settlement was a fair and equitable resolution of the property issues arising from this action. She stated that she was not under the influence of alcohol, drugs or stress which would inhibit her ability to enter into the agreement. She has been represented in the negotiation of the agreement by competent counsel with whom she is satisfied. Plaintiff requested the Court to confirm the Settlement Agreement and make the same the Order of the Court. She acknowledged understanding that once the agreement was approved by the Court and made the Order of the Court the terms of the agreement could not be modified or changed.

Defendant, Ah Tsao Sun, was not present at this hearing. Ah Tsao Sun has, however, filed her affidavit with this Court wherein she acknowledged that she participated in the negotiations leading to the settlement of the property issues, and that she was aware of the financial circumstances involving the alleged marital property. She states that she fully understood the terms and provisions of the Settlement Agreement and that, under the circumstance prevailing, she felt the agreement was a fair and equitable resolution of the property issues arising in the divorce action between Liling Sun and Joseph Sun. She stated that she was not under the influence of alcohol or drugs, or an undue amount of stress that would render her unable to fully understand her rights or the content of the agreement. She stated she was completely satisfied with the services of Mr. Tootle. She requested that the Court confirm the Settlement Agreement and make it the Order of the Court. She acknowledged understanding that once the agreement was approved by the Court and made the Order of the Court the terms of the agreement could not be modified or changed.

The Court has reviewed the written Settlement Agreement entered into between Liling Sun and Ah Tsao Sun. The Court finds these parties entered into the agreement freely and voluntarily and that they both fully understand the terms and provisions of their agreement. Neither party was under the influence of alcohol, drugs, or an undue amount of stress which would inhibit their ability to understand the agreement or to freely and voluntarily enter into the agreement. Both parties felt the agreement was a fair and equitable resolution of the property issues involved in this litigation. Both parties requested that the Court confirm the Agreement and make it the Order of the Court. The Court finds the Settlement Agreement to be a fair and equitable resolution of the property issues arising out of this action. The Settlement Agreement is confirmed and made the Order of this Court.

Testimony thereafter resumed on the issue of child custody. After the lunch break, the parties advised the Court that they had commenced settlement negotiations. The Court permitted the parties to continue their negotiations. Later in the afternoon, the parties advised the Court that they had resolved between them all remaining issues involved in the case. Through their attorneys Liling Sun and Joseph Sun orally placed their settlement on the record. Their settlement is as follows:

1. ~~Liling Sun and Joseph Sun shall jointly share the custody of their daughter, Abigail Sun, born April 27, 2001. Liling Sun is designated the child's primary care taker.~~
2. Joseph Sun shall have the following visitation rights with Abigail:
 - a. **Weekend Visitation:** Mr. Sun shall have alternating weekends from Friday at six o'clock (6:00) p.m. until Sunday at six o'clock (6:00) p.m. Weekend visitation shall commence with the first weekend following the signing of this Order.
 - b. **Holiday Visitation:**
 - **Spring School Break/Easter Weekend:** Mr. Sun shall have spring school break (Easter weekend) on even-numbered years starting at six o'clock (6:00) p.m. the last day of school and ending at six o'clock (6:00) p.m. the evening prior to the child returning to school. Mrs. Sun shall have spring school break (Easter weekend) on odd-numbered years starting at six o'clock (6:00) p.m. the last day of school and ending at six o'clock (6:00) p.m. the evening prior to the child returning to school.

- *Thanksgiving Visitation:* Mr. Sun shall have Thanksgiving vacation on odd-numbered years, and Mrs. Sun shall have Thanksgiving vacation on even-numbered years. Thanksgiving shall commence at six o'clock (6:00) p.m. on the last day the child is in school or would be in school if they were attending school, and shall end at six o'clock (6:00) p.m. on the following Sunday.
 - *Christmas Visitation:* Mr. Sun shall have the child during the first half of Christmas break on even-numbered years starting at six o'clock (6:00) p.m. the day school lets out and ending twelve o'clock (12:00) p.m. on December 25th and shall have the second half of Christmas break on odd-numbered years starting at twelve o'clock (12:00) p.m. on December 25th and ending at six o'clock (6:00) p.m. the evening prior to school starting back. Mrs. Sun shall have the same Christmas holiday with the child except it shall be on the alternating years.
 - *Mother's Day/Father's Day:* The child shall be with the mother on Mother's Day and with the father on Father's Day from nine o'clock (9:00) a.m. until six (6:00) p.m.
- c. ***Monday/Friday Holidays:*** As to any other holiday which is celebrated on a Monday or a Friday and which is recognized by the state or the county in which the child resides and the school in which the child is enrolled, while school is in session, the parent having the child for that weekend as a normal part of the alternating weekends or selected summer visitations shall have the child on that Monday that the holiday is celebrated until six o'clock (6:00) p.m. or starting at six o'clock (6:00) p.m. the Thursday night before the Friday holiday is celebrated.
- d. ***Summer Visitation:*** Mr. Sun shall have two (2) two (2) week periods (with at least two [2] weeks in between) of visitation during the summer. He shall pick the weeks and notify Mrs. Sun in writing on or before May 15th of each year. Mrs. Sun shall have two (2) consecutive full weeks during the summer.
- e. ***First Right of Refusal:*** For as long as Mrs. Sun resides in the Beaufort County, South Carolina area she shall notify Mr. Sun of all times she is in the need of a

baby-sitter for Abigail and Mr. Sun shall have the right of first refusal to babysit Abigail during those times.

- f. **Telephone Contact:** Both parents shall have reasonable and, at all times, private telephone contact with the child and the child shall be allowed to have reasonable private telephone contact with either parent. Mr. Sun shall provide Abigail with a cellular telephone for the purposes of his telephone communication with the child, and he shall be responsible for paying any charges associated with the telephone.
- g. **Important Events:** Both parties shall timely notify the other party of any reasonably important event occurring while the child is in their care, such as, but not limited to baptisms, bar mitzvahs, sporting events, dance recitals, school plays, etc. Both parents may attend. When in doubt, the other parent shall be noticed.
- h. **Access to Records:** Both parents shall have full and complete access to all medical providers, school records, school personnel, coaches, counselors and other professionals involved the child's life and shall be allowed to discuss their child's circumstances and needs with these people. Each party shall inform the other party of the identity of such people.
- i. **Concerning Emergencies or Medical Emergencies:**
- Whenever emergencies arise or when major decisions are to be made or substantial changes brought about affecting the life or well-being of the child with regards to non-routine matters such as education, choice of schools, travel, religious training, illness and operations, selection of physicians, dentists, and psychiatrists, camps, participation in sports, major disciplinary matters, and other matters of similar importance, Mrs. Sun, as primary, agrees to consult with Mr. Sun to solicit his insight and opinions concerning the decisions to be made, and agrees to give due deference to his input. Both Parents agree to be reasonable and cooperative in this process and shall always act in a manner calculated to serve the best interests of the child. Absent agreement to the contrary, routine

decisions regarding the child shall be made by Mrs. Sun. In the case of major decisions, and absent agreement, Mrs. Sun, as primary, shall have the right to make major decisions.

- In a medical emergency, the visiting parent may make appropriate decisions and is hereby granted authority to and shall sign appropriate documents to protect the health and welfare of the visiting child. This is not to undermine the custodian's legal authority to make appropriate decisions. The visiting parent shall make reasonable efforts to contact the custodian but shall have the authority to act and shall not delay in protecting the child from imminent danger.
 - Each person shall provide and sign such information and forms as required and not otherwise reasonably available to reasonably allow for the fulfillment of this Order. This includes but is not limited to such items as: insurance cards, school schedules, flight schedules, medical appointments, work schedules, prescription medications, releases of information, etc.
- j. **Failure to pay child support/ denial of visitation:** The failure to pay child support does not alter this visitation and the denial of this visitation does not alter one's duty to pay child support. (Remedies such as contempt may apply.)
- k. **Pick up and return of the minor child:** Mrs. Sun is allowed to move within the state of South Carolina with Abigail. *She shall not move outside the state with the child.* Unless otherwise specified, Mr. Sun shall pick up and return the child to and from law enforcement parking lot closest to Mrs. Sun for all periods of visitation so long as Mrs. Sun is a resident of the Beaufort County, South Carolina area. In the event Mrs. Sun relocates outside of the Beaufort County, South Carolina area to some other area within this state, the parties shall designate an area half way between their homes for the purpose of exchanging the child for visitation. *BSH*
- l. All parties are restrained against having any form of physical or verbal confrontation or allowing another to do so in front of the child.

- m. All parties are restrained against excessively consuming or being under the influence of alcohol (defined the same as might apply to driving under the influence), the consumption of any illegal drug or the abuse of any prescription drug or allowing another to do so while the child is under his/her care.
- n. All parties are restrained against the use of profanity or making any derogatory comments about or toward the other party or allowing anyone else to do so in front of the child or in any manner whereby the child might learn of the same.
- o. All parties are restrained from having the child on an overnight basis in the presence of a party of the opposite sex to whom the parties are not related by blood or marriage or any lover/paramour. Neither party shall expose the child to conditions which imply a relationship such as a boyfriend or girlfriend, paramour/lover or some type of improper relationship.
- p. All parties are required to keep the child in a moral and safe environment at all times.
- q. All parties are required to see that the child in their care properly attends school and is not out of school in violation of any educational requirement of this State.
- r. All parties are required to see that the child in their care receives proper medical attention and appropriately takes prescribed medications or reasonably necessary medical treatments and to that end shall ensure that the child in their care attends any scheduled medical appointments and shall exchange medications which are to be taken, all as might be reasonable and appropriate and in compliance with their religious beliefs, a specific court order or the law.
- s. All parties are restrained against conduct detrimental to the child of any particular nature relating to the particular needs of the child such as not smoking around a child who is asthmatic.
- t. One party shall not schedule nor allow others to schedule elective matters to do with the child on or during the other party's time.
- u. At all times the child shall be properly supervised and not left with babysitters who are not appropriate in any manner by way of age, conduct, past history or otherwise of which a parent or custodian or visiting party has knowledge, should have knowledge or may with reasonable efforts have gained knowledge.

BSA

- v. All parties are restrained against allowing the child to see or be exposed to age-inappropriate movies, games or other material or forms of entertainment and shall take all reasonable precautions against the same. In no case shall the child be exposed to any X-rated or pornographic material.
3. Mr. Sun shall contribute child support for Abigail in compliance with the South Carolina Child Support Guidelines. Mr. Sun claims to have little or no income. Mr. Sun is, however, a college graduate and admits to being a carpenter/contractor of sorts. The Court finds no reason why minimum wage should not be imputed to him. Mrs. Sun has submitted a financial declaration showing income of monthly. The resulting child support is monthly. Mr. Sun shall pay ^{\$208.00} ~~\$411.00~~ plus the administrative charge ^{of 5%} thereon, through the Beaufort County Family Court, commencing October 1, 2010. *for a total of \$218.40. RSM*
4. Liling Sun and Joseph Sun each waive any right which they may have to the receipt of alimony or any other form of spousal support from the other.
5. Each party shall pay their own respective attorney fees and costs incurred in this action.
6. The Guardian *Ad Litem* has submitted a final billing in the amount of \$7,075.00. Liling Sun has previously paid \$2,000.00 of this fee and Joseph Sun has previously paid \$2,194.00 of this fee. Within forty-five (45) days of the signing of this order, Liling Sun shall pay to the Guardian the sum of \$1487.50 for her unpaid share of the Guardian's fee and Joseph Sun shall pay to the Guardian the sum of \$1393.50 for his unpaid share of the Guardian's fee.
7. That the parties are restrained from incurring any debt and/or liability in the name of the other.
8. That Mr. Sun is restrained from harassing, following, or coming about the workplace or residence of Mrs. Sun.
9. That Mr. Sun is restrained from abusing, threatening to abuse, or molesting the Mrs. *Sun* and/or the minor child and is additionally restrained from inflicting any and all *BM* manner and type of corporal punishment on the parties' minor child.
10. Both parties will be mutually restrained from harming or harassing the other party or from coming about or contacting the other.

11. Both parties shall be restrained, prohibited, and forbidden from disparaging the other in the presence or close proximity of the minor child.
12. Both parties shall be restrained, prohibited, and forbidden from harassing, threatening, abusing, communicating with or coming about the other party for any reason unrelated to the minor child
13. Both parties shall be restrained, prohibited, and forbidden to abuse, threaten to abuse, or molest the other or engaging in any other conduct that would place the other party in reasonable fear of bodily injury.
14. Both parties shall be restrained, prohibited, and forbidden from using, attempting to use, or threatening to use physical force against the other that would reasonable be expected to cause bodily injury.

* I questioned both Liling Sun and Joseph Sun about their agreement. Both advised the Court that they fully understood each and every term of the agreement; that they entered into the agreement freely and voluntarily; that each understood their financial circumstances and that of the other; that they were both represented by attorneys of their own choosing and that both were completely satisfied with the services of their respective attorneys. Both parties advised the Court that the agreement promoted the best interests of their minor child. Both parties asked the Court to confirm their agreement and make their agreement the Order of the Court.

The Guardian *Ad Litem* informed the Court that she felt the parties' settlement agreement promoted the best interest of the minor child Abigail Sun and she requested that the agreement be made the Order of the Court.

After carefully considering the parties settlement agreement, as well as the testimony and other evidentiary material submitted previously in this case, the Court concludes that the parties settlement agreement regarding issues of child custody and the like, and all other issues addressed in the parties agreement, are fair and equitable and promotes the best interests of Abigail. The Court concludes that the parties' settlement agreement, as set forth above, should be confirmed and made the Order of this Court.

* 15. All previous restraining orders not inconsistent with this order remain in full force and effect. RSM

From the testimony taken from the parties and the witnesses I make the following Findings of Facts:

1. Plaintiff and Defendant, Joseph Sun, are residents of the State of South Carolina having resided in Beaufort County for a period in excess of one year immediately and continuously prior to the filing of this action. Defendant, Ah Tsao Sun, is a resident of Canada and is properly before this Court pursuant to the mandates of the South Carolina Marital Properties act.
2. Plaintiff and Defendant are Husband and Wife having been lawfully married each to the other on May 14, 1999 in Beaufort County, South Carolina.
3. From the union of marriage between Liling Sun and Joseph Sun one child has been born, to-wit: Abigail Sun, born April 27, 2001. There are no other children expected.
4. The parties separated each from the other on March 10, 2009 and have lived separate and apart without intervening cohabitation since that time.
5. The Court finds these parties entered into the above settlement agreements set forth above freely and voluntarily and that all parties fully understand the terms and provisions of their agreements. Neither party was under the influence of alcohol, drugs, or an undue amount of stress which would inhibit their ability to understand the agreements they made or to freely and voluntarily enter into the agreement. All parties felt the agreements were a fair and equitable resolution of all the issues addressed in that agreement and involved in this litigation. All parties requested the Court to confirm their Agreements set forth herein and make the agreements the Order of the Court. The Court finds the Agreements set forth herein to be fair and equitable resolutions of the issues addressed in the agreements and arising out of this action. The Agreements, as set forth herein, should be confirmed and made the Order of this Court.

From the Findings of Facts, I make the following Conclusions of Law:

1. This court has jurisdiction and venue over the parties and subject matter before the court.

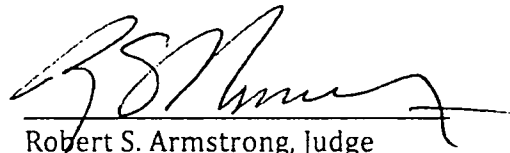
2. The parties are entitled to a Decree of Divorce, i.e. a divorce a vinculo matrimonii, each from the other on the grounds of continued separation without cohabitation for a period in excess of one year.
3. The parties agreements as set forth herein constitute fair and equitable resolutions of all the issues before this Court and the agreement between Liling Sun and Joseph Sun set forth infra promotes the best interest of the parties minor child and should be made the order of this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The parties are hereby awarded a Decree of Divorce, i.e. a divorce a vinculo matrimonii, each from the other on the grounds of continuous separation without cohabitation for a period in excess of one year.
2. The Settlement Agreement entered into by and between the Plaintiff, Liling Sun and Defendant, Ah Tsao Sun, attached hereto is confirmed and made the Order of this Court.
3. The Settlement Agreement entered into by and between Plaintiff, Liling Sun, and Defendant, Joseph Sun, as set forth above in this Order, is hereby confirmed and made the Order of this Court.

AND IT IS SO ORDERED:

October 13 2010.
Beaufort, South Carolina


Robert S. Armstrong, Judge
Family Court
Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT

COUNTY OF BEAUFORT)

FOURTEENTH JUDICIAL CIRCUIT

LILING SUN,)

Plaintiff,)

VS.)

SETTLEMENT AGREEMENT

JOSEPH SUN, and)

AH TSAO SUN)

Defendants.)

DOCKET NO. 2009-DR-07-628

THIS AGREEMENT made and entered into this _____ day of August, 2010, in the Town of Beaufort, Beaufort County, South Carolina, by and between Liling Sun herein referred to as "**WIFE**", and Ah Tsao Sun hereinafter referred to as "**SECOND DEFENDANT**".

WHEREAS, Joseph Sun hereinafter referred to as "**HUSBAND**" and **WIFE** were lawfully married on May 14, 1999 in Beaufort, South Carolina; and

WHEREAS, one (1) child was born of this marriage, to wit: Abigail Sun, born April 27, 2001. No other children are expected; and

WHEREAS, the **HUSBAND** and **WIFE** have experienced certain domestic difficulties, disputes and apparently irreconcilable differences, which caused the **HUSBAND** and **WIFE** to separate and live separate apart since on or about March 10, 2009; and

WHEREAS, **WIFE** is represented by Olesya Matyushevsky, Esquire, of Citizens Opposed to Domestic Abuse and **SECOND DEFENDANT** is represented by Kenneth L. Tootle, Esquire; and , **WIFE** and **SECOND DEFENDANT** acknowledge that they have been completely and fairly represented and believe that they have been fully advised of all their rights and responsibilities generally, and especially hereunder; and

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Wife Initials

Page 1 of 9

Ah Tsao Sun

WHEREAS, the WIFE and SECOND DEFENDANT hereto now consider it in their respective best interests to settle between themselves all property matters and issues heretofore arising or hereafter to arise from the marital union between HUSBAND and WIFE; and

WHEREAS, the WIFE and SECOND DEFENDANT have reached an agreement and wish to reduce their agreement to writing and intend that it shall constitute a final, permanent settlement between WIFE and SECOND DEFENDANT with respect to all marital property and equitable division matters arising from this action; and

WHEREAS, the WIFE and SECOND DEFENDANT each are familiar with the assets, debts and liabilities, financial ability, income and expenses of each other and represent that they are not entering into this Agreement as a result of any duress or any undue influence, but as a natural consequence of the breakdown of the marriage between HUSBAND and WIFE and desire to settle all issues relating to the breakup of the marital union between HUSBAND and WIFE; and each fully accepts the terms and conditions hereof; each acknowledges and consider this Agreement to be an equitable, fair, and just Agreement; and each has had the opportunity to obtain the advice of counsel as to the terms and conditions hereof and the affect hereof; and

WHEREAS, the WIFE and SECOND DEFENDANT intend that this Agreement is not conditioned upon the obtaining of a divorce, but instead, is intended to be a complete and full settlement between the parties regarding all issues relating to the breakup of the marital union between HUSBAND and WIFE, independent of the obtaining of the divorce; and

WHEREAS, the WIFE and SECOND DEFENDANT intend that this Agreement should be approved and adopted by a Court of competent jurisdiction after a hearing upon the same, whether or not such Court issues a decree of divorce to either HUSBAND or WIFE; and further, the parties intend that such Court shall have

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Wife Initials

Page 2 of 9

As
Ah Tsao Sun

continuing jurisdiction for the enforcement of this Agreement by contempt proceedings and otherwise; and

NOW, THEREFORE, in consideration of the promises and mutual covenants herein set forth, **WIFE** and **SECOND DEFENDANT** do hereby freely and voluntarily agree as follows:

I. EQUITABLE DIVISION OF REAL PROPERTY

A. The **WIFE** and **SECOND DEFENDANT** have agreed upon the following complete settlement and resolution of all marital property issues involved in this litigation:

1. At such time as this Agreement is approved by the Court **SECOND DEFENDANT** shall pay to **WIFE** the sum of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars. This amount shall be non-taxable to **WIFE** and shall be represented in the manner of an attorney's escrow account check or cashiers check made payable to **WIFE**.
2. Upon receipt of the \$75,000.00, **WIFE** shall execute and deliver to **SECOND DEFENDANT**, Ah Tsao Sun, a quit-claim deed conveying any and all interest which **WIFE** may have in and to the real properties known and designated as 18 6th Avenue, Bluffton, South Carolina 29910 and the property located at 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina 29936. Upon **WIFE**'s signing of said quit-claim deed, **SECOND DEFENDANT** assumes responsibility for payment of any taxes, insurance and maintenance associated with the above named properties.
3. **WIFE** shall have thirty (30) days from the receipt of the Seventy-Five Thousand (\$75,000.00) Dollars to relocate from 18 Sixth Avenue, Bluffton, South Carolina. Once the home has been vacated by **WIFE**, taking with her personal belongings, **HUSBAND** shall have the right to occupy the premises.
4. **WIFE** hereby forever releases, waives and relinquishes any and all rights or claims which she may have to any other property which she claims, could have claimed or in the future may claim to be marital property, it being that

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Wife Initials

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Ah Tsao Sun

Handwritten signature/initials

the payment of the Seventy-Five Thousand (\$75,000.00) Dollars is a full and complete settlement of all issues raised or which could have been raised under the marital property act.

II. AUTOMOBILES AND JEWELRY

B. **WIFE** shall retain sole use, ownership, and possession of the 2009 Toyota Corolla vehicle that is currently in her possession free of all claims of **HUSBAND** or **SECOND DEFENDANT**. **WIFE** shall be solely responsible for the insurance, repairs, upkeep, and all other expenses relating to this automobile. At the time as this Agreement is approved by the Court, **SECOND DEFENDANT** will provide to **WIFE** the fully executed Lost/Stolen or Destroyed License Plate Replacement Application for the 2009 Toyota Corolla. Within thirty (30) days of the signing of this settlement agreement **SECOND DEFENDANT** shall turn over to her attorney the title for the 2009 Toyota Corolla.

C. **HUSBAND** shall retain sole use, ownership, and possession of the vehicles in his possession free of any claims of **WIFE**. **HUSBAND** shall be solely responsible for the insurance, repairs, upkeep and all other expenses relating to these vehicles.

D. **WIFE** shall retain sole ownership of the diamond ring that is currently in her possession free and clear of any claims of **SECOND DEFENDANT**.

III. RETIREMENT and FINANCIAL ACCOUNTS

E. **WIFE** waives any right, title, or interest in any retirement and/ or financial accounts in the name of, the possession of, or belonging to **HUSBAND** or **SECOND DEFENDANT**.

F. **HUSBAND** and **SECOND DEFENDANT** waive any right, title or interest in any retirement or financial accounts in the name of, the possession of, or belonging to **WIFE**.

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IV. ATTORNEY AND SEQUESTRATOR

A. The **WIFE** and **SECOND DEFENDANT** agree that they shall each be responsible for the payment of their own attorney fees incurred in the obtaining of this agreement and in any and all subsequent hearings in this matter. However, if **HUSBAND, SECOND DEFENDANT, or WIFE** should commence an action in Family Court in order to enforce the terms and conditions of this Agreement, then the prevailing party shall be entitled to have his or her attorney fees paid by the non-prevailing party.

B. The **WIFE** and **SECOND DEFENDANT** agree that they will each be responsible for payment of \$2,000 of the outstanding bill of Thad Vincent, Esquire, the Court appointed Sequestrator. Payment shall be made within thirty (30) days of the signing of this agreement.

V. MISCELLANEOUS PROVISIONS

A. **WIFE** and **SECOND DEFENDANT** each expressly agree to execute any and all documents relating to the foregoing which may be necessary to effectuate the intent of the **WIFE** and **SECOND DEFENDANT** and to carry out the terms of this Agreement.

A. Except as otherwise provided in this Agreement, **WIFE** and **SECOND DEFENDANT** hereby releases and forever discharges the other, his or her executors, administrators, assigns, property and estate from any and all rights, claims, demands, and obligations, past, present or future, arising out of or by virtue of the marital relationship of the **HUSBAND** and **WIFE**, including, but without limiting the generality of the foregoing, dower rights, curtesy, homestead rights, rights to elect regarding the estate of the other, or to take against the will or by intestacy; right to act as personal representative of the estate of the other, and all other similar or related rights, under the laws of any state or territory of the United States or any foreign country, as such laws exist or may hereafter be enacted or amended. **WIFE** and **SECOND DEFENDANT** will, upon request of the other, execute good and sufficient releases of demeanor and/or curtesy to the other, or to his or her heirs, executors, administrators, or

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Wife Initials

Page 5 of 9.

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Ah Tsao Sun

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assigns, and will join at the request of the other in executing any deed or other instrument affecting such property.

B. Subject to the provisions of this Agreement, **WIFE** and **SECOND DEFENDANT**, for themselves and their heirs, legal representatives, executors, administrators and assigns, hereby remise, release and forever discharge the other of and from any and all causes or causes of actions, claims, rights or demands whatsoever, in law or in equity, which any of the **WIFE** and **SECOND DEFENDANT** hereto ever had, or now has, against the other or the legal representatives of the other party except, any or all causes of action for divorce, or separation action now pending or hereafter brought by the other.

C. **WIFE** and **SECOND DEFENDANT** warrant that they have carefully read and fully considered this agreement and all of the statements, terms, conditions and provisions thereof prior to its execution and that its provisions and both their legal and practical effect have been fully explained to the parties, and each party acknowledges that the agreement is fair and equitable, that it is being entered into voluntarily and that it is not the result of any fraud, misrepresentations, duress, or undue influence exercised by either party upon the other or by any other persons. Both parties acknowledge that no representation or warranties have been made by either party to the other, or by anyone else, except as expressly set forth in this agreement, and this agreement is not being executed in reliance upon any representations and or warranties having been made by **SECOND DEFENDANT** to **WIFE** or by anyone else to **WIFE**, with respect to past, present or future income, assets, liabilities or expenses of **SECOND DEFENDANT**, and without limiting the foregoing, no representation or warranties have been made by **WIFE** to **SECOND DEFENDANT**, or anyone else to **SECOND DEFENDANT**, with respect to the past, present or future income, assets, liabilities or expenses of **WIFE**.

D. This Agreement expresses the entire agreement between **WIFE** and **SECOND DEFENDANT** and supersedes any prior understandings or agreements between them, and there are no other representations or warranties other than those expressly set forth herein, but any portion hereof may be altered, removed, or added to by written consent duly signed and acknowledged by each of the parties hereto.

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Wife Initials

Page 6 of 9

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E. Each provision of this Agreement shall be binding independently of and in all other provisions of this Agreement and no provision hereof may be deemed void or invalid by reason of the invalidity of any other provision.

F. **WIFE** and **SECOND DEFENDANT** may apply to the Family Court of the State of South Carolina for an Order directing specific performance of any act or duty imposed by or upon another by this Agreement, and for appropriate relief to enforce the terms hereof.

G. No waiver of any breach by any party to the terms of this Agreement shall be binding upon another party unless reduced to writing and subscribed to by the parties hereto.

H. This Agreement was duly executed and delivered in Beaufort County, South Carolina, and its terms and conditions shall be governed by and interpreted under the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date and year first above shown on this Agreement.

WITNESSES:

Christine Varg
Theresa McLoary

[Signature]
WIFE

WITNESSES:

[Signature]
[Signature]

Ah Tsao Sun
SECOND DEFENDANT

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Wife Initials

As
Ah Tsao Sun

3/18

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Christine Varg (print
witness name) and made oath that he/she saw the within-named ~~WIFE~~, sign seal and
as her act and deed, deliver the within-written document; and that she/he with
Theresa M. Leacy (print notary name)
witnessed the execution thereof.

Christine Varg
Witness Signature

Sworn and subscribed before me September
This 29th day of ~~August~~, 2010.

Theresa M. Leacy
Notary Public for South Carolina
My Commission expires: 2-12-13

M PROVINCE OF ONTARIO

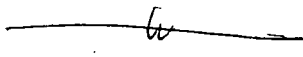
~~STATE OF SOUTH CAROLINA~~)

JUDICIAL DISTRICT OF YORK)

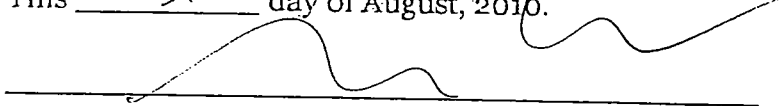
M ~~COUNTY OF BEAUFORT~~)

PROBATE

PERSONALLY appeared before me Shirley Mak (print
witness name) and made oath that he/she saw the within-named **SECOND**
DEFENDANT, sign seal and as his act and deed, deliver the within-written document;
and that she/he with Bryon C. Cohen (print
notary name) witnessed the execution thereof.


Witness Signature

Sworn and subscribed before me
This 31 day of August, 2010.


Notary Public for ~~South Carolina~~ Province of Ontario
My Commission expires: NO EXPIRY

*Rec'd
17/20*

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IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,

Plaintiff,

v.

OLESYA MATYUSHEVSKY, CITIZENS)
OPPOSING DOMESTIC ABUSE,
CHRISTINE VARG and LILING SUN,

Defendants.

CIVIL ACTION

NO. 2011-CP-07-2546

2011 JUN 15 PM 1:37

COMPLAINT

COMES NOW, PLAINTIFF JOSEPH SUN, and shows the court as follows:

- (1) Defendant Olesya Matyushevsky is a resident of Beaufort County and an attorney employed at Defendant C.O.D.A., whose office is located at 655 Waight Street, Beaufort, SC 29901. Service of the process can be perfected on this defendant by delivering a copy of the summons and complaint to her personally at the aforesaid address.
- (2) Defendant Citizen Opposing Domestic Abuse (hereinafter CODA) is a corporation whose office is located at 655 Waight Street, Beaufort, SC 29901. Service of the process can be perfected on this defendant by delivering a copy of the summons and complaint to the Director Deborah Dubrowski personally at the aforesaid address.
- (3) Defendant Christine Varg is a resident of Beaufort County and an employee of CODA. Service of the process can be perfected on this defendant by delivering a copy of the summons and complaint to her personally at Defendant CODA located at 655 Waight Street, Beaufort, SC 29901.
- (4) Defendant LiLing Sun is a resident of Beaufort County. Service of the process can be

perfected on her by delivering a copy of the summons and complaint to her personally at her home located at Apartment A-7, Oakfield Apartments on Mossy Oaks Road, Beaufort, SC 29902.

BACKGROUND ON MARRIAGE

(5) In January 1999, after introduction through an acquaintance in California, Joseph Sun went to Guangzhou, China and met LiLing Xie (Sun) for the first time. After about one week in China, meeting on a daily basis and sleeping together every night, Joseph and LiLing decided to be married in the United States.

(6) Joseph came back to U.S. and applied for a fiancé visa for LiLing who came to Atlanta, GA in April 1999 to stay in Joseph's home. Joseph was living in Lawrenceville, GA just outside of Atlanta at the time. He was working in a family company called Sun-Pacific Enterprises, Inc. owned by his father SeChun Sun. His father was a wealthy businessman who owned several pieces of real property in Georgia and South Carolina, and was having development projects on some of those properties. Joseph was given the job of coordinating several development projects and was employed as a contractor in the company.

(7) LiLing spoke little English after she came to U.S. to meet with Joseph. She had no money, no job, no income and no credit. Joseph drove her to English classes several times a week, drove her to meet her friends, all personal matters, U.S. Immigration Office periodically to report her visa status and taught her how to drive. Before they were married near the end of May 1999, Joseph and LiLing went to see an attorney and both agreed to sign a Prenuptial Agreement. Joseph gave LiLing a copy of the Prenuptial and offered to fax it to her lawyer cousin in L.A. so he could advise LiLing. After consulting with her lawyer cousin on several lengthy telephone calls, LiLing signed the Prenuptial at the Gwinnett County Courthouse some time in April 1999. LiLing and Joseph were

soon married at the Beaufort County Courthouse in May 1999.

(8) After obtaining the marriage certificate, LiLing immediately applied for the Green Card at the U.S. Immigration which would give her the permanent residence in U.S. The application consisted of a financial statement. LiLing had no financial means, therefore, she asked Joseph and his father for help. LiLing pretended to be a loving wife and a good daughter in law. Joseph and his father were not aware of LiLing's fraudulent motive and pretense (more details infra) therefore agreed to help. LiLing was required to fill out the Application Form I-485 at the U.S. Immigration which included the Financial Statement. In order for LiLing to look good on her application for permanent residence, LiLing was employed by Sun-Pacific Enterprises, Inc. as the secretary and was allowed to purchase the Knowles Island Plantation lot from the company with no down payment based on a ten year loan payment plan.

(9) The Knowles Island lot was deeded to LiLing Sun in about 2000 after her marriage with Joseph, and LiLing immediately signed another warranty deed on the Knowles Island lot back to SeChun Sun as collateral. LiLing also signed a promissory note on the repayment of the Knowles Island lot.

(10) Because LiLing showed on the face she had some assets in U.S. and she was gainfully employed, her application for Permanent Residence was approved quickly by U.S. Immigration. LiLing obtained her Greencard some time at the end of 2000. The United States Department of State allowed the application of citizenship by an alien resident like LiLing after obtaining the Greencard for 3 years. Therefore, in 2003, LiLing filled out an application for U.S. Citizenship which was granted in about 2005. Joseph drove LiLing to Charleston for the Citizenship ceremony.

(11) Defendant LiLing never worked during the marriage until 2007. She could not work because of her English deficiency. After the house at Bluffton Park was purchased by and recorded in the name of AhTsao Sun, Joe's mother in Canada who allowed Plaintiff Joseph and his family to move in with a Rental Agreement, LiLing moved back in with Joe at the Bluffton home in about November 2007 after she left for about 6 months.

STATEMENT OF FACTS

FRAUD COMMITTED BY DEFENDANTS MATYUSHEVSKY AND LILING

(12) In 2008, Joe's mother AhTsao Sun in Canada signed a warranty deed naming Joseph Sun as Grantee and mailed it to Joseph in Bluffton. The deed was not filed immediately. LiLing began working at Beaufort Memorial Hospital in 2008. Because she was the only one who went to Beaufort everyday at the time, she offered to take the deed to Beaufort for filing.

(13) In mid January 2009, Joseph went to Bluffton office of the Beaufort Assessor to apply for the 4% property tax, but was told that the house was not in his name but in the name of LiLing Sun. Joseph went home and confronted LiLing who pretended to be a loving wife, told Plaintiff Joseph that there was no difference whose name the house was titled, and that she would make payment to AhTsao Sun on the house. She further agreed to apply for the 4% tax, and in addition sign a warranty deed on the house back to Joe's mother Ah Tsao Sun as her collateral.

(14) Defendants Matyushevsky and CODA represented Defendant LiLing and filed a complaint for separation based on unsupported accusation of domestic abuse made by Defendant LiLing. As the case progressed, evidence of LiLing's adultery and involvement in pornography surfaced and that there was no credible evidence of domestic abuse. All the defendants then conspired in a scheme of coverup of LiLing's bad acts and defrauding money and property from Plaintiff.

(15) After Plaintiff's mother AhTsao Sun was informed of the divorce filed by Defendant LiLing, the aforesaid collateral warranty deed signed by LiLing was filed at the Beaufort County Courthouse thereby converting the Bluffton house back to the purchaser AhTsao Sun. Defendant Matyushevsky scheduled a temporary hearing on June 25, 2009 but did not perfect service of the notice of hearing until one day before the hearing on June 24, 2009 in violation of the Rules of Family Court.

Plaintiff Joseph had no opportunity to find a lawyer therefore had to appear at the hearing alone. At the hearing, when Plaintiff Joseph asked for a continuance based on insufficient service of the notice of hearing, Defendant Matyushevsky presented a Certified Mail receipt of the divorce complaint served a month ago and claimed it as proof of service of the notice of temporary hearing.

(16) Family Court Judge unaware of the false proof of service denied continuance, conducted the temporary hearing where Plaintiff Joseph was totally unprepared and had no counsel. Defendants LiLing and Matyushevsky then presented a copy of the altered warranty deed as proof of ownership of the marital home, covering up the fact that the house was already titled in AhTsao Sun, Plaintiff's mother. As a result, Defendant LiLing was awarded temporary possession of the Bluffton house, a 2009 Toyota car and a diamond ring when Defendants knew that LiLing had no ownership or entitlement to any of that. Plaintiff was evicted and became homeless.

(17) Plaintiff had a rental agreement with his mother, the owner of the Bluffton House and he was the only lawful resident allowed. Due to fraud committed as aforesaid, for a period of about 18 months, Plaintiff had to rent temporary residence at several locations. Plaintiff is entitled to recover damages in the amount of \$20,000.00 from Defendants Matyushevsky and LiLing.

ADULTERY COMMITTED BY LILING SUN

(18) During the same period in early 2009, before filing for divorce, LiLing already met Tony

(real name Mark Walsh) on the internet and was involved in a sexual relationship. (See emails and photos.) Mark Walsh and LiLing was sending pornographic photos and love letters to each other by emails throughout 2009. In about March 2009, LiLing rented an apartment in Beaufort at the Wilderness Too Apartments. She moved out of the Bluffton house and moved in her apartment with the minor daughter Abigail, but went to Defendants CODA and Matyushevsky and falsely claimed domestic abuse, for the purpose of free legal representation. They conspired and obtained temporary possession of the Bluffton house by fraud as LiLing's second home for their leverage in their scheme of fraud and extortion against Plaintiff's mother AhTsao Sun

(19) Joseph and LiLing had access to each others email passwords at the time and those pornographic photos and love letters were printed out and given to the Guardian Ad Litem in the divorce case. LiLing and Mark Walsh were meeting at the Beaufort apartment between August 17 and 20, 2009 where after they had sex, they called minor daughter Abigail to join them in bed several times. LiLing repeatedly lied to minor Abigail that the Caucasian Mark Walsh was her cousin therefore they could sleep together in bed, and that Abigail could join them. Plaintiff explained to Abigail that a Caucasian man could not be a cousin of her Chinese mother. Abigail was very depressed with the lies told by LiLing.

(20) During visitation on August 22, 2009, Abigail told Plaintiff Joseph regarding the indecent acts, Plaintiff made a recording of his conversation with daughter Abigail and again gave a copy to the Guardian Ad Litem who questioned LiLing with the presence of Defendant Matyushevsky. These defendants admitted the incidence in the apartment but was angry at Plaintiff Joseph's recording and printing of the love letter emails and pornographic photos. These defendants then devised a scheme of vengeance against Plaintiff and deceit to defraud money from Plaintiff's

mother in Canada. To eliminate their opposition and witness, to wit, Plaintiff Joseph Sun, they devised a scheme of using lies and fabrication to repeatedly put Plaintiff in jail in March 2010 through September 2010, and to burglarize his property while he was in jail.

WRONGFUL ARRESTS AND INCARCERATION

(21) Defendants Matyushevsky, Varg and LiLing through the guise of Defendant CODA, fabricated lies of harassment, unlawful phone calls, stalking, possession of burglary tools and burglary without any evidence or witness against Plaintiff Joseph. Defendants used false accusations to have Plaintiff arrested and put in jail repeatedly from March 2010 until September 2010, just so they could accomplish their fraudulent and criminal schemes.

(22) During the period when Plaintiff was incarcerated, all the Defendants individually and/or collectively, made phone calls and wrote letters to Plaintiff's mother AhTsao Sun in Canada and her lawyer demanding \$200,000.00 as settlement. AhTsao Sun was 90 years old in poor health and could not speak English, became shocked and depressed, thereby slipped and fell, injured her head and went into a coma. After several weeks, the old lady recovered and while Plaintiff was in jail, knew nothing regarding the defendants false claims, agreed to give the defendants \$75,000.00 as a "settlement" in exchange for the defendants to leave her property alone in South Carolina. AhTsao Sun and LiLing Sun signed a property settlement as part of the Suns Divorce Decree.

(23) During the six month in jail, Plaintiff had little contacts with his mother or other relatives in Canada. Plaintiff could not expose the truth and did not join in the divorce settlement with the defendants because he knew the defendants criminal and fraudulent scheme against him and his mother, but he could not explain to or help his mother in Canada from jail. Plaintiff was incarcerated unjustly and suffered depression and mental pain.

LIBEL AND SLANDER

(24) During 2010 when Defendants Matyushevsky, through the authority and consent of CODA, was trying to defraud money from AhTsao Sun, wrote and send numerous letters to and verbally told several attorneys, bank officers and law enforcement falsely defaming Plaintiff as a criminal involving in criminal activity of the charges fabricated by her and her client LiLing Sun.

(25) Defendants LiLing, Matyushevsky and CODA made false and malicious slander and libel against Plaintiff as their calculated effort to injure Plaintiff Joseph and to facilitate their extortion against AhTsao Sun who was extremely worried about the false charges lodged against Plaintiff Joseph. Their calculated scheme was by defaming Plaintiff who knew their crime and fraud, they could cover up their bad acts while no one would believe the truthful complaint of Plaintiff against their crime and fraud when Plaintiff was in jail.

(26) Plaintiff is entitled to recover injury and damages in an amount of \$100,000.00 from Defendants Matyushevsky and CODA jointly and severally.

BREAK IN OF PLAINTIFF'S HOME AND BURGLARY OF PLAINTIFF'S PROPERTY

(27) Some time in early August 2010, when Plaintiff was still incarcerated as result of Defendants' lies and fabrication, Defendants LiLing, Matyuchevsky, Varg and CODA conspired in and committed the break-in of Plaintiff's temporary home at Knowles Island Plantation in Ridgeland, destroyed Plaintiff's Sentry Safe and large key box, then stole the entire contents inside the safe and key box. These defendants accomplished the break-in using sledge hammer, crow bar, electric grinder and numerous tools found at Plaintiff's residence. In addition, these defendants conspired to steal large quantity of papers and files from Plaintiff's file cabinets at his temporary home. These defendants were hoping to find and destroy the original altered warranty deed and the

~~Prenuptial Agreement~~, financial statements on accounts of Plaintiff or his mother Ahtsao Sun to help them in any monetary advantage in the divorce case.

(28) Defendants Matyushevsky and CODA aided and abetted the burglary committed by Defendants LiLing and Varg, by coaching and committing the hiding and storage of numerous items burglarized from Plaintiff's home at Knowles Island Plantation. Plaintiff is entitled to recover all his personal and business papers and files, check books, car and boat titles, original warranty deeds and numerous legal papers and valuables inside the safe and all the keys inside the key box, and the replacement of the Sentry Safe and the key box. All defendants are required to reimburse Plaintiff for the repair and replacement of lost tools and equipments and damages to the house caused by the break in. Plaintiff is entitled to recover up to an amount of \$50,000.00 for any and all damages he has suffered.

THEFT OF PLAINTIFF'S PROPERTY IN THE BLUFFTON HOUSE

(29) As an agreement with Plaintiff's mother AhTsao Sun as alleged in Paragraph 22, Defendant LiLing had no claims on any marital property and was required to relinquish all marital property taken by all defendants. With the help of all other defendants, Defendant LiLing rented a large trailer and moved out of the Bluffton home on December 5, 2010 with large quantity of valuable property belonging to Plaintiff Joseph. Plaintiff suffered property and financial losses.

(30) As part of her activity of vendetta and harassment against Plaintiff for exposing her adultery and involvement in pornography, Defendant LiLing caused substantial damages, filth and put trash in the Bluffton house prior to moving out of the house which Defendants obtained possession by fraud in the divorce case. Plaintiff is entitled to have all his property returned to him or recover damages in the amount of \$30,000.00 from the defendants jointly and severally.

MONETARY LOSS CAUSE BY DEFENDANTS WRONGFUL ACTS

(31) All the defendants conspired to and/or actually committed numerous wrongful acts against Plaintiff Joseph causing him to have to borrow repeatedly large amount of money to pay attorneys and legal expenses including posting a \$300,000.00 bond. Plaintiff is entitled to recover the amount of \$100,000.00 from the defendants jointly and severally.

PUNITIVE DAMAGES

(32) All the defendants conspired to commit and/or had committed numerous outrageous, malicious, criminal and fraudulent acts causing Plaintiff property and monetary damages and injury to his person and reputation. Plaintiff Joseph Sun is entitled to recover punitive damages of \$1,000,000.00 from the defendants jointly and severally to punish the defendants and to deter them from further such wrong doings.

Wherefore, Plaintiff Joseph Sun prays the court to award him:

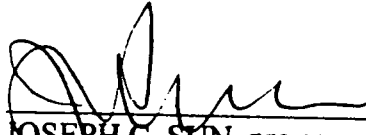
- (1) A trial by jury in this case.
- (2) An amount of \$20,000.00 jointly and severally from Defendants Matyushevsky, CODA and LiLing as alleged in Paragraph 17.
- (3) An amount of \$100,000.00 jointly and severally from Defendants Matyushevsky and CODA for committed libel and slander against Plaintiff as alleged in Paragraph 26.
- (4) An amount up to \$50,000.00 jointly and severally from all the defendants for their conspiracy of and break-in and burglary of Plaintiff's temporary home at Knowles Island Plantation as alleged in Paragraph 27.
- (5) An amount up to \$30,000.00 jointly and severally from all the defendants for their conspiracy of and break-in and theft of Plaintiff's property and trashing at the Bluffton home as

alleged in Paragraph 30.

- (6) An amount of \$100,000.00 jointly and severally from all the defendants for their wrongful acts causing Plaintiff monetary damages in attorney and legal fees and expenses as alleged in Paragraph 31.
- (7) Punitive damages in an amount of \$1,000,000.00 or an amount according to justice and fairness, jointly and severally from all the defendants to punish them and deter them from further such wrong doing as alleged in Paragraph 32.
- (8) All attorneys fees and legal expenses in prosecuting this case. (It is Plaintiff's desire and plan to seek legal representation as soon as possible.)
- (9) Any other relief which the court may deem just and proper.

Respectfully submitted,

This 6th day of June, 2011.


JOSEPH C. SUN, pro se
P. O. Box 2544
Bluffton, SC 29910
843-227-0963

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) CASE NO. 11-CP-07-2546

Joseph Sun,

Plaintiff,

v.

Olesya Matyushevsky, Citizens Opposed to
Domestic Abuse, Christine Varg and
Liling Sun,

Defendants.

)
)
)
)
) **ANSWER OF DEFENDANTS**
) **OLESYA MATYUSHEVSKY, CITIZENS**
) **OPPOSED TO DOMESTIC ABUSE AND**
) **CHRISTINE VARG**
)
)
)
)
)

Defendants Olesya Matyushevsky ("Matyushevsky"), Citizens Opposed to Domestic Abuse ("CODA") (incorrectly identified in the Complaint as Citizens Opposing Domestic Abuse), and Christine Varg ("Varg"), answering the Complaint of the Plaintiff, allege and say that:

FIRST DEFENSE

Matyushevsky, CODA and Varg deny all allegations not hereinafter specifically admitted. As to the correspondingly numbered paragraphs of the Complaint, Matyushevsky, CODA and Varg respond as follows:

1. Matyushevsky, CODA and Varg admit so much of Paragraph 1 as alleges that Matyushevsky is a staff attorney with CODA in Beaufort, South Carolina. The remaining allegations of Paragraph 1 relating to service of process constitute conclusions of law, which they are required neither to admit nor to deny.

2. Matyushevsky, CODA and Varg admit so much of Paragraph 2 as alleges that CODA is a non-profit corporation with offices in Beaufort County. The allegations of Paragraph 2 relating to service of process constitute conclusions of law, which they are

required neither to admit nor to deny.

3. Matyushevsky, CODA and Varg admit so much of Paragraph 3 as alleges that Varg is a court advocate with CODA in Beaufort, South Carolina. The remaining allegations of Paragraph 3 relating to service of process constitute conclusions of law, which they are required neither to admit nor to deny.

4-13. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the allegations of Paragraphs 4-13 and therefore deny the same.

14. Matyushevsky, CODA and Varg admit only so much of Paragraph 14 as alleges that Matyushevsky represented Liling Sun as attorney of record in Case No. 09-DR-07-628 in the Beaufort County Family Court. Matyushevsky, CODA and Varg allege that the record in that case speaks for itself, deny any allegations inconsistent with the record, and allege that Joseph Sun was represented by counsel in that case and knowingly and voluntarily agreed to a settlement of the case. Matyushevsky, CODA and Varg deny the remaining allegations of Paragraph 14.

15. Matyushevsky, CODA and Varg deny the allegations of Paragraph 15 relating to Matyushevsky's actions. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 15 and therefore deny the same.

16. Matyushevsky, CODA and Varg deny the allegations of Paragraph 16.

17. Matyushevsky, CODA and Varg deny the allegations of Paragraph 17 relating to Matyushevsky's actions and relating to the alleged right to recover damages. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 17 and therefore deny the same.

18. Matyushevsky, CODA and Varg deny the allegations of Paragraph 18 relating to the actions of Matyushevsky and CODA. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 18 and therefore deny the same.

19. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the allegations of Paragraph 19 and therefore deny the same.

20. Matyushevsky, CODA and Varg deny the allegations of Paragraph 20 relating to their actions. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 20 and therefore deny the same.

21. Matyushevsky, CODA and Varg deny the allegations of Paragraph 21.

22. Matyushevsky, CODA and Varg admit only so much of Paragraph 22 as alleges that AhSao Sun and Liling Sun reached a settlement of the property issues in Case No. 09-DR-07-628 in the Beaufort County Family Court. Matyushevsky, CODA and Varg deny the allegations relating to their actions. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 22 and therefore deny the same.

23. Matyushevsky, CODA and Varg deny the allegations of the second sentence of Paragraph 23 and deny the allegation he was incarcerated unjustly. Matyushevsky, CODA and Varg lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 23 and therefore deny the same.

24-32. Matyushevsky, CODA and Varg deny the allegations of Paragraphs 24-32 relating to their actions. Matyushevsky, CODA and Varg lack knowledge or information

sufficient to form a belief as to the remaining allegations of Paragraphs 24-32 and therefore deny the same.

SECOND DEFENSE

The Court lacks subject matter jurisdiction of matters that were litigated in the Family Court for Beaufort County.

THIRD DEFENSE

Plaintiff's claims are barred by the doctrines of collateral estoppel and/or res judicata.

FOURTH DEFENSE

Plaintiff has failed to mitigate his damages as required by law.

FIFTH DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

SIXTH DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

SEVENTH DEFENSE

Plaintiff's claims are barred by the doctrine of judicial estoppel.

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrine of settlement and release.

NINTH DEFENSE

The Complaint fails to state facts sufficient to constitute a cause of action.

TENTH DEFENSE

Plaintiff's claims may be barred by applicable statutes of limitations.

ELEVENTH DEFENSE

Any alleged defamatory statements were true or substantially true.

TWELFTH DEFENSE

Any alleged defamatory statements were subject to an absolute or qualified privilege.

THIRTEENTH DEFENSE

Matyushevsky, CODA and Varg are immune from liability to third persons arising out of the performance of legal services for their client.

FOURTEENTH DEFENSE

Plaintiff is barred from recovering punitive damages by operation of S.C. Code §33-56-180.

FIFTEENTH DEFENSE

The amount of Plaintiff's recovery of actual damages may not exceed the limitation on liability contained in the South Carolina Tort Claims Act by operation of S.C. Code §33-56-180.

SIXTEENTH DEFENSE

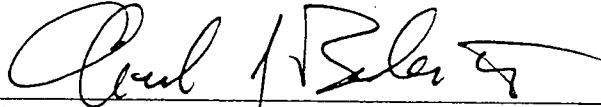
Plaintiff may not recover from Matyushevsky or Varg unless their conduct was reckless, willful or grossly negligent by operation of S.C. Code §33-56-180.

RESERVATION AND NON-WAIVER

Matyushevsky, CODA and Varg reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully answered the Complaint, Defendants Olesya Matyushevsky, CODA and Christine Varg pray that the same be dismissed with costs, including reasonable attorneys' fees, and for such other and further relief as the Court may deem just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC



Charles J. Baker III (S.C. Bar No. 486)

5 Exchange Street

Post Office Box 999

Charleston, SC 29402-0999

Telephone: (843) 722-3400

cbaker@wcsr.com

*Attorneys for Defendants Olesya Matyushevsky,
Citizens Opposed to Domestic Abuse and Christine Varg*

CHARLESTON, SC

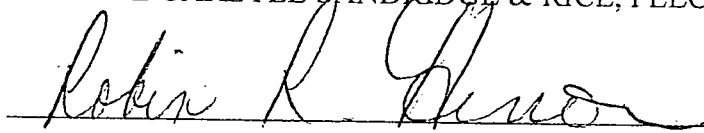
July 18, 2011

CERTIFICATE OF SERVICE

This will certify that on July 18 2011, I did serve a copy of the above *Answer of Defendants Olesya Matyushevsky, Citizens Opposed to Domestic Abuse and Christine Varg* by forwarding the same via first-class, U.S. Mail, postage prepaid and properly addressed, to:

Joseph Sun
Post Office Box 2544
Bluffton, SC 29910

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C/A NO.: 2011-CP-07-2546
	)	
JOSEPH C. SUN,	)	
	)	
Plaintiff,	)	MOTION TO DISMISS
	)	
vs.	)	
	)	
OLESYA MATYUSHEVSKY, CITIZENS	)	
OPPOSED TO DOMESTIC ABUSE,	)	
CHRISTINE VARG AND LILING SUN,	)	
	)	
Defendants.	)	

PLEASE TAKE NOTICE that Defendants Olesya Matyushevsky, Citizens Opposed to Domestic Abuse and Christine Varg (collectively, "Defendants"), by and through their undersigned counsel, hereby move for an Order dismissing Plaintiff's Complaint with prejudice on the following grounds:

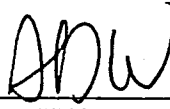
1. This Court lacks subject matter jurisdiction of matters that were litigated in the Family Court for Beaufort County, South Carolina;
2. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action;
3. Plaintiff's claims are barred by the doctrine of *res judicata*;
4. Plaintiff's claims are barred by the doctrine of collateral estoppel;
5. Defendants are entitled to immunity from suit; and
6. Such other grounds as may be presented at the hearing on this Motion.

Defendants base this Motion on the pleadings, South Carolina Rules of Civil Procedure, applicable statutes, applicable case law, and any supporting Memorandum and/or exhibits to be filed prior to the hearing of this Motion.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
843-727-0307

Respectfully submitted,

CARLOCK COPELAND & STAIR, LLP

By: 
SARAH E. WETMORE
State Bar No.: 17235

JACKSON H. DANIEL III
State Bar No.: 70308

Attorneys for Defendants Olesya Matyushevsky,
Citizens Opposed to Domestic Abuse and
Christine Varg

) IN THE COURT OF COMMON PLEAS
) THE FOURTEENTH JUDICIAL CIRCUIT
) C/A NO.: 2011-CP-07-2546

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IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,

Plaintiff,

v.

OLESYA MATYUSHEVSKY, CITIZENS)
OPPOSING DOMESTIC ABUSE,)
CHRISTINE VARG and LILING SUN,)

Defendants.)

CIVIL ACTION
NO. 2011-CP-07-2546

2011 DEC 15 PM 2:48
CLERK OF COURT
J. C. HARRIS, JR.
CLERK OF COURT

MOTION TO AMEND AND SUPPLEMENT

PLAINTIFF JOSEPH SUN moves to the court for leave to amend and supplement his initial complaint pursuant to SCRCP Rule 15(a) and (d). Plaintiff is financially unable to hire a lawyer at this time to represent him in this case. Plaintiff has good cause of action in this action but was unable to make professional and/or clear allegations in his initial complaint resulting in a wrong interpretation of the instant action as one belonging in the Family Court.

Rule 15(a) provides that "leave to amend shall be freely given when justice so requires and does not prejudice any other party." The rule has no restriction on the time allowed to move the court for leave to amend the complaint. Plaintiff has not alleged any new facts, only clarifies with specificities in his allegations therefore the defendants will not suffer any prejudice.

Rule 15(d) provides that Plaintiff is permitted "to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a cause of action or defense."

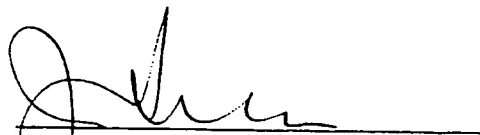
Presently, the order dismissing complaint as to Defendant LiLing Sun is on appeal.

Without considering the outcome of the appeal, in summary, the grounds for dismissal stated in the aforesaid order are: (1) that Plaintiff states "insufficient facts" (Page 4, Para. 13 and 14) to constitute a cause of action for fraud or adultery. (2) That Plaintiff failed to allege specific civil conspiracy and that malicious prosecution has been terminated in his favor. (Page 4 and 5, Para. 15 and 16.) (3) That there is another pending action between the parties on Plaintiff's claim of trespass, adultery, theft, burglary, conspiracy, libel, slander and fraud and that only the Family Court has exclusive jurisdiction (Para. 17 and 18, Page 5 order.) All the aforesaid grounds stated in the order of dismissal are not adjudication on the merits and no evidence has been presented on any issues or allegations in the complaint, therefore, the dismissal is one without prejudice.

For the foregoing reasons, Plaintiff prays the court to grant him leave to file his attached Amended Complaint in replacing his entire initially filed Complaint.

This 14th day of December, 2011.

Respectfully submitted,



JOSEPH C. SUN, pro se
P. O. Box 2544
Bluffton, SC 29910
843-227-0963

CERTIFICATE OF SERVICE

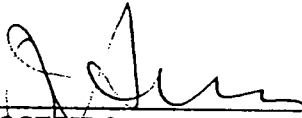
CERTIFICATE OF SERVICE

I certify that I have this date served all the Defendants a copy of Plaintiff's motion to amend and supplement and the Amended Complaint by depositing a copy of same in the United States Mail, postage prepaid to the following addresses:

J. Sam Scoville, Esq.
P. O. Drawer 1107
Beaufort, SC 29901-1107
Attorney for Respondent
843-524-3109

Charles J. Baker III, Esq.
P. O. Box 999
Charleston, SC 29402-0999
Attorney for Defendants Matyusheky, CODA & Varg
843-722-3400

This 15th day of December, 2011,



JOSEPH C. SUN, pro se
P. O. Box 2544
Bluffton, SC 29910
843-227-0963

2011 DEC 15 PM 2:48
DEPT. OF CLERK OF COURT

IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT
STATE OF SOUTH CAROLINA

JOSEPH C. SUN,

Plaintiff,

v.

OLESYA MATYUSHEVSKY, CITIZENS)
OPPOSING DOMESTIC ABUSE,)
CHRISTINE VARG and LILING SUN,)

Defendants.

CIVIL ACTION

NO. 2011-CP-07-2546

AMENDED COMPLAINT

COMES NOW, PLAINTIFF JOSEPH SUN, and with leave of court and shows his amended complaint in replacement of his initial complaint as follows:

- (1) Defendant Olesya Matyushevsky is a resident of Beaufort County and an attorney employed at Defendant C.O.D.A., whose office is located at 655 Waight Street, Beaufort, SC 29901. Service of the process has been perfected on this defendant by delivering a copy of the summons and complaint to her personally at the aforesaid address.
- (2) Defendant Citizen Opposing Domestic Abuse (hereinafter CODA) is a corporation whose office is located at 655 Waight Street, Beaufort, SC 29901. Service of the process has been perfected on this defendant by delivering a copy of the summons and complaint to the Director Deborah Dubrowski personally at the aforesaid address.
- (3) Defendant Christine Varg is a resident of Beaufort County and an employee of CODA. Service of the process has been perfected on this defendant by delivering a copy of the summons and complaint to her at Defendant CODA located at 655 Waight Street, Beaufort, SC 29901.

(4) Defendant LiLing Sun (now LiLing Xie) is a resident of Beaufort County. Service of the process has been perfected on her by delivering a copy of the summons and complaint to her personally at her home located at Apartment A-7, Oakfield Apartments on Mossy Oaks Road, Beaufort, SC 29902.

(5) In January 1999, after introduction through an acquaintance in California, Plaintiff Joseph Sun went to Guangzhou, China and met LiLing Xie (Sun) for the first time. After about one week in China, Joseph and LiLing decided to be married. Joseph came back to the United States and applied for a fiancée visa for LiLing who received her visa and came to Atlanta, GA in April 1999. Joseph was living in Lawrenceville, GA just outside of Atlanta at the time. He was working in a family company called Sun-Pacific Enterprises, Inc. owned by his father SeChun Sun. His father was the owner of several pieces of real property in Georgia and South Carolina, and was having development projects on some of those properties. Joseph was given the job of coordinating several development projects and was employed as a contractor in the company.

(6) LiLing spoke little English after she came to U.S. to meet with Joseph. She had no money, no job, no income and no credit. Joseph helped her with everything: drove her to English classes several times a week, drove her to meet her friends, all personal matters, to U.S. Immigration Office periodically to report her visa status and taught her how to drive. Before they were married near the end of May 1999, Joseph and LiLing went to see an attorney and both agreed to sign a Prenuptial Agreement which was the condition and contract for the marriage. Joseph gave LiLing a copy of the Prenuptial and offered to fax it to her lawyer cousin in L.A. so he could advise LiLing. After consulting with her lawyer cousin on several lengthy telephone calls, LiLing signed the Prenuptial at the Gwinnett County Courthouse some time in April 1999.

LiLing and Joseph were soon married at the Beaufort County Courthouse in May 1999.

(7) After obtaining the marriage certificate, LiLing immediately applied for the Green Card at the U.S. Immigration which would give her the permanent residence in U.S. The application consisted of a financial statement. LiLing had no financial means, therefore, she asked Joseph and his father for help. LiLing pretended to be a loving wife and a good daughter in law as part of her scheme to use Joseph to obtain her citizenship and to obtain money and property from Joseph's parents. Joseph and his father were not aware of LiLing's fraudulent motive and pretend therefore agreed to help. In order for LiLing to look good on her application for permanent residence, LiLing was employed by Sun-Pacific Enterprises, Inc. as the secretary and was allowed to purchase the Knowles Island Plantation lot from the company with no down payment based on a ten year loan payment plan.

(8) The Knowles Island lot was deeded to LiLing Sun in about 2000 after her marriage with Plaintiff Joseph, and LiLing immediately signed another warranty deed on the Knowles Island lot back to Joseph's father, SeChun Sun as collateral. LiLing also signed a promissory note on the repayment of the Knowles Island lot. Because LiLing showed on the face she had some assets in U.S. and she was gainfully employed, her application for Permanent Residence was approved quickly by U.S. Immigration in 2000. The United States Department of State allowed the application of citizenship by an alien resident like LiLing after obtaining the Greencard for 3 years. Therefore, in 2003, LiLing filled out an application for U.S. Citizenship which was granted in about 2005. Joseph drove LiLing to Charleston for the Citizenship ceremony.

(9) Defendant LiLing never worked during the marriage until 2007. She secretly left home several times and for several days at a time to meet with her men friends. Plaintiff Joseph was

unaware of any extra-marital activity committed by LiLing. After the house at Bluffton Park was purchased by and recorded in the name of AhTsao Sun, Joe's mother in Canada who allowed Plaintiff Joseph and his family to move in with a Rental Agreement, LiLing moved back in with Joe at the Bluffton home in about November 2007 after she left for about 6 months.

FRAUD COMMITTED BY DEFENDANTS MATYUSHEVSKY AND LILING

(10) In 2008, Joe's mother AhTsao Sun in Canada signed a warranty deed naming Joseph Sun as Grantee and mailed it to Joseph in Bluffton. The deed was not filed immediately. LiLing began working at Beaufort Memorial Hospital in 2008. Because she was the only one who went to Beaufort to work everyday, she offered to take the deed to Beaufort for filing. In mid January 2009, Joseph went to Bluffton office of the Beaufort Assessor to apply for the 4% property tax on the house, but was told that the house was not in his name but in the name of LiLing Sun. Joseph went home and confronted LiLing who pretended to be a loving wife indicating there was no difference however the house was titled and that she would make payment to AhTsao Sun on the house. She further agreed to apply for the 4% tax, and in addition sign a warranty deed on the house back to Joe's mother Ah Tsao Sun as her collateral.

(11) Defendant LiLing pretended to be a loving wife so Plaintiff would be silent on her crime of forgery. Defendant LiLing's fraud led Plaintiff Joseph to believe and trust LiLing that her forgery was done harmless therefore left the Bluffton house in her name until her extra-marital affairs were exposed. During the same period in early 2009, LiLing's mother for about 3 months, was visiting Plaintiff's family from China. In January 2009, as part of her scheme to coverup her forgery of the warranty deed on the Bluffton house and her extra-marital affairs, LiLing invited Joseph and her mother, to a trip to Disney World in Florida. It was a pleasant vacation for

several days. But LiLing already secretly met Tony (real name Mark Walsh) and was involved in a sexual relationship for several months. Mark Walsh and LiLing was sending pornographic photos and love letters to each other by emails throughout 2009.

(12) After LiLing's mother left and returned to China in February 2009, in March 2009, LiLing rented an apartment in Beaufort at the Wilderness Too Apartments. She moved out of the Bluffton house and moved in her apartment with the minor daughter Abigail, but went to Defendants CODA using fabricated excuses of domestic abuse. Defendant Matyushevsky was a beginner lawyer at CODA who aided and abetted and coached LiLing, and together they devised a scheme of using perjury and fraud to obtain money and property from Plaintiff's family.

Defendant CODA condoned, supported and allowed all wrongful acts and fraud committed by Defendants LiLing and Matyushevsky after LiLing had shown no evidence of any abuse therefore was ineligible to use the service at CODA.

(13) In about April 2009, after Plaintiff's mother AhTsao Sun was informed of the divorce filed by Defendant LiLing who had failed to make any payments on the Bluffton house, the aforesaid collateral warranty deed signed by LiLing was filed at the Beaufort County Courthouse thereby transferring the title of Bluffton house back to the purchaser AhTsao Sun.

(14) Defendant Matyushevsky scheduled a temporary hearing on June 25, 2009 but did not perfect service of the notice of hearing until one day before the hearing on June 24, 2009 in violation of the Rules of Family Court. Plaintiff Joseph had no opportunity to find a lawyer therefore had to appear at the hearing alone. At the hearing, when Plaintiff Joseph asked for a continuance based on insufficient service of the notice of hearing, Defendant Matyushevsky presented a Certified Mail receipt of the divorce complaint served a month ago and claimed it as

proof of service of the notice of temporary hearing. Defendant Matyushevsky is guilty of depriving Plaintiff's right to due process of a temporary hearing by her fraud.

(15) Family Court Judge unaware of the fraudulent proof of service denied continuance, conducted the temporary hearing where Plaintiff Joseph was totally unprepared and had no counsel. Defendants LiLing and Matyushevsky then presented a copy of the warranty deed forged by Defendant LiLing as proof of ownership of the marital home, covering up the fact that the house was already titled in AhTsao Sun, Plaintiff's mother. As a result, Defendant LiLing was awarded temporary possession of the Bluffton house, a 2009 Toyota car and a diamond ring when Defendants knew that LiLing had no ownership or entitlement to any of that. Plaintiff was evicted and became homeless. The Family Court issued a Pendente Lite Order on June 25, 2009 which order was not correctable after Plaintiff obtained legal counsel.

(16) Plaintiff was the only lawful resident allowed to reside in the house by the owner. Due to fraud committed as aforesaid, for a period of about 18 months, Plaintiff had to rent temporary residence at several locations. Plaintiff is entitled to recover damages in the amount of \$20,000.00 from Defendants CODA, Matyushevsky and LiLing.

COVERUP OF ADULTERY AND PORNOGRAPHY COMMITTED BY LILING USING FALSE ARRESTS AND MALICIOUS PROSECUTION CAUSING DAMAGES AND INJURY TO PLAINTIFF

(17) Joseph and LiLing had access to each others' email passwords in 2009 and their email addresses were cross-referenced. Inadvertently, Plaintiff Joseph discovered numerous love letters and pornographic photos sent to each other between LiLing and her "boy friend" Mark Walsh, AKA "Tony An" at the time. Those pornographic photos and love letters were printed out and given to the Guardian Ad Litem in the divorce case. LiLing and Mark Walsh were meeting at the

meeting at the Beaufort apartment between August 17 and 20, 2009 where after they had sex, they called in minor daughter Abigail to join them in bed several times.

(18) During visitation on August 22, 2009, Abigail told Plaintiff Joseph regarding the indecent acts, Plaintiff made a recording of his conversation with daughter Abigail and again gave a copy to the Guardian Ad Litem who shared the CD recording with LiLing and Defendant Matyushevsky. These defendants admitted the incidence in the apartment and devised a scheme of vengeance to injure Plaintiff and of deceit to defraud money from Plaintiff's mother by repeatedly making false accusations to the police and using perjury in court. Plaintiff was jailed numerous times in 2010 until the divorce case was settled between Defendant LiLing and Plaintiff's mother without Plaintiff's knowledge or consent.

(19) LiLing repeatedly lied to minor Abigail that the Caucasian Mark Walsh was her cousin therefore they could sleep together in bed, and that Abigail could join them. Plaintiff explained to Abigail that a Caucasian man could not be a cousin of her Chinese mother. Abigail was very depressed with the lies told by LiLing. LiLing severely chastised minor daughter Abigail for telling Plaintiff anything about her boy friend Mark Walsh, thereby causing depression of the young child. Defendant Matyushevsky then falsely and fraudulently prepared perjured affidavits for LiLing to sign and file at the Family Court accusing Plaintiff of "psychologically abuse".

(20) Record shows that all bad acts committed by LiLing and Matyushevsky were not, and could not be, presented or adjudicated in the Family Court because these defendants obstructed justice by employing a scheme of fraud to use lies and fabrications to have Plaintiff Sun, the witness to their crime and fraud, be repeatedly arrested and charged and put in jail to coverup, while at the same time, they repeatedly harassed and pressured Plaintiff's 90 year old mother for

money. When Plaintiff was released from jail in September 2010 and appeared at the final hearing where Final Divorce was granted, there was already a settlement between Defendant LiLing and Plaintiff's 90 year old mother. Plaintiff was completely blind-folded from their "settlement" and had not agreed to any of it.

(21) Defendants Matyushevsky, Varg and LiLing through the guise of Defendant CODA, fabricated lies of harassment, unlawful phone calls, stalking, possession of burglary tools and burglary without any evidence or witness against Plaintiff Joseph except their lies. Defendants used false accusations to have Plaintiff arrested and put in jail repeatedly from March 2010 until September 2010, just so they could accomplish their fraudulent and criminal schemes.

(22) During the period when Plaintiff was incarcerated, all the Defendants individually and/or collectively, made phone calls and/or employed other persons to write letters to Plaintiff's mother AhTsao Sun and other family members demanding \$200,000.00 as settlement. AhTsao Sun was 90 years old in poor health and could not speak English, became shocked and depressed, thereby slipped and fell, injured her head and went into a coma. After several weeks, Plaintiff's mother in her improved condition, without knowing anything regarding the defendants false claims, agreed to give the defendants \$75,000.00 as a "settlement" in exchange for the defendants to stop harassing her.

(23) During the six month in jail, Plaintiff had little contacts with his mother or other relatives. Plaintiff could not expose the truth and did not sign in the divorce settlement with the defendants because he knew the defendants criminal and fraudulent scheme against him and his mother, but he could not explain to or help his mother in Canada from jail. Plaintiff was incarcerated unjustly and suffered depression and mental pain. Defendant LiLing's adultery and pornography

should be exposed and proven, and would have caused her to lose custody and any award of property and money apportionment. By the joint effort of crime and fraud, these defendants succeeded in covering up their aforesaid bad acts and succeeded their defraud of money and property from Plaintiff and his mother.

(24) Some of the aforesaid fabricated charges against Plaintiff have already been dismissed. Plaintiff expects to be acquitted of all remaining charges because he knows the truth of his innocence and Defendants' false accusation and fraud. Therefore, this cause of action will be supplemented pursuant to SCRCF Rule 15(d). Plaintiff is entitled to recover damages and personal injury in the amount of \$50,000.00 from the defendants jointly and severally.

LIBEL AND SLANDER

(25) During 2010 when Defendants Matyushevsky, through the authority and consent of CODA, was trying to defraud money from AhTsao Sun, committed libel and slander against Plaintiff. Matyushevsky wrote and sent numerous letters to and verbally told several attorneys, bank officers and law enforcement false and degrading comments that Plaintiff was a criminal involving in criminal activity of the charges fabricated by her and her client LiLing Sun.

(26) Defendants LiLing, Matyushevsky and CODA made false and malicious slander and libel against Plaintiff as their calculated effort to injure Plaintiff Joseph and to facilitate their extortion against AhTsao Sun who was extremely worried about the false charges lodged against Plaintiff Joseph. Their calculated scheme was by defaming Plaintiff who knew their crime and fraud, they could cover up their bad acts while no one would believe the truthful complaint of Plaintiff against their crime and fraud when Plaintiff was wrongfully put in jail.

(27) Plaintiff is entitled to recover injury and damages in an amount of \$50,000.00 from

Defendants LiLing, Matyushevsky and CODA jointly and severally.

BREAK IN OF PLAINTIFF'S HOME AND BURGLARY OF PLAINTIFF'S PROPERTY

(28) Some time in early August 2010, when Plaintiff was still incarcerated as result of Defendants' lies and fabrication, Defendants LiLing, Matyushevsky, Varg and CODA conspired in and committed the break-in of Plaintiff's temporary home at Knowles Island Plantation in Ridgeland, destroyed Plaintiff's Sentry Safe and large key box, then stole the entire contents inside the safe and key box. These defendants accomplished the break-in using sledge hammer, crow bar, electric grinder and numerous tools found at Plaintiff's residence. In addition, these defendants stole large quantity of keys for vehicles and machines, valuable papers and files including the original Prenuptial Agreement, financial statements, titles and check books on accounts of Plaintiff and his mother Ahtsao Sun.

(29) Defendant LiLing with the advice of Defendants Matyushevsky and Varg burglarized Plaintiff's home at Knowles Island several times again after the divorce decree was issued, at least once in 2011 accompanied by Plaintiff's minor daughter Abigail. Some of the stolen items are stored at Defendant CODA office in Beaufort, SC. Defendant Matyushevsky presented a stolen car title on the 2009 Toyota Corolla to Plaintiff's divorce counsel Ken Tootle and demanded the transfer of title to her client.

(30) Plaintiff is entitled to recover all his personal and business papers and files, check books, car and boat titles, original warranty deeds and numerous legal papers and valuables inside the safe and all the keys inside the key box, and the replacement of the Sentry Safe and the key box. All defendants are required to reimburse Plaintiff for the repair and replacement of lost tools and equipments and damages to the house caused by the break in. Plaintiff is entitled to recover an

amount of \$50,000.00 from the defendants jointly and severally.

THEFT OF PLAINTIFF'S PROPERTY IN THE BLUFFTON HOUSE

(31) Several months after the divorce was granted, Defendant LiLing rented a large trailer and moved out of the Bluffton home on December 5, 2010 with large quantity of valuable property belonging to Plaintiff Joseph. With help and advice from Defendants Matyushevsky and Varg, Defendant removed the hard drive from Plaintiff's computer in his office at home, in their scheme and effort to destroy documentary evidence and find financial data to their advantage. Some of those property was hidden at Defendant CODA by Defendants Varg and Matyushevsky. Plaintiff suffered property and financial losses. Defendant LiLing has no right to any property in the Bluffton House which property all belonged to Plaintiff and his mother. Defendant LiLing's action was a breach of the Prenuptial Agreement between the parties.

(32) As part of their vendetta and harassment against Plaintiff for exposing her adultery and involvement in pornography, after the divorce was granted by the Family Court, Defendant LiLing caused substantial damages, filth and put trash in the Bluffton house prior to moving out of the house which Defendants obtained possession by fraud in the divorce case. Plaintiff is entitled to have all his property returned to him or recover damages in the amount of \$30,000.00 from the defendants jointly and severally.

BREACH OF THE PRENUPTIAL AGREEMENT

(33) All the defendants conspired to and/or committed numerous wrongful acts with third parties to employ crime and fraud as aforesaid in previous paragraphs to cover up the provisions in the Prenuptial Agreement between Joseph and LiLing Sun. After several break-ins and burglary, the defendant successfully stole the original Prenuptial Agreement from Plaintiff's

home. Then the defendants used false and fabricated accusations against Plaintiff Joseph causing Plaintiff to be incarcerated extensive period in 2010. The PreNuptial Agreement could not be presented or considered by the Family Court even though a copy was presented at the temporary hearing on June 25, 2009.

(34) Plaintiff suffered damages and injury caused by all the defendants wrongful acts in covering up the existence of the PreNuptial Agreement. In addition, Plaintiff had to borrow repeatedly large amount of money to pay attorneys and legal expenses including posting a \$300,000.00 bond. Plaintiff is entitled to recover the amount of \$100,000.00 from the defendants jointly and severally.

PUNITIVE DAMAGES

(35) All the defendants conspired to commit and/or had committed numerous outrageous, malicious, criminal and fraudulent acts causing Plaintiff property and monetary damages and injury to his person and reputation. Plaintiff's 90 year old mother never recovered from the injury she suffered caused by the defendants repeated harassment and pressure for money. Plaintiff's mother died at the end of September 2011 and all the defendants malicious acts have contributed to her death. Plaintiff suffered permanent loss of consortium of his mother due to all the defendants' wrongful acts. Plaintiff Joseph Sun is entitled to recover punitive damages of \$1,000,000.00 from the defendants jointly and severally to punish the defendants and to deter them from further such wrong doings.

Wherefore, Plaintiff Joseph Sun prays the court to award him:

- (1) A trial by jury in this case.
- (2) An amount of \$20,000.00 jointly and severally from Defendants Matyushevsky, CODA

and LiLing as alleged in Paragraph 16.

(3) An amount of \$50,000.00 jointly and severally from all the defendants as alleged in Paragraph 24.

(4) An amount of \$50,000.00 jointly and severally from Defendants Matyushevsky and CODA for committed libel and slander against Plaintiff as alleged in Paragraph 27.

(5) An amount of \$50,000.00 jointly and severally from all the defendants for their conspiracy of and break-in and burglary of Plaintiff's temporary home at Knowles Island Plantation as alleged in Paragraph 30.

(6) An amount up to \$30,000.00 jointly and severally from all the defendants for their conspiracy of and break-in and theft of Plaintiff's property and trashing at the Bluffton home as alleged in Paragraph 32.

(7) An amount of \$100,000.00 jointly and severally from all the defendants for their conspired and concerted acts of coverup the existence and breech of the PreNuptial Agreement causing Plaintiff monetary damages in attorney and legal fees and expenses as alleged in Paragraph 34.

(8) Punitive damages in an amount of \$1,000,000.00 or an amount according to justice and fairness, jointly and severally from all the defendants to punish them and deter them from further such wrong doing as alleged in Paragraph 35.

(9) The return of all property taken and/or stolen from the knowles Island and Bluffton Homes by any and all defendants as alleged in the foregoing complaint.

(10) All attorneys fees and legal expenses in prosecuting this case. (It is Plaintiff's desire and plan to seek legal representation as soon as possible.)

(11) Any other relief which the court may deem just and proper.

Respectfully submitted,

This 14th day of December, 2011.



JOSEPH C. SUN, pro se
P. O. Box 2544
Bluffton, SC 29910
843-227-0963

CERTIFICATE OF SERVICE

I certify that I have this date served all the Defendants a copy of Plaintiff's motion to amend and supplement and the Amended Complaint by depositing a copy of same in the United States Mail, postage prepaid to the following addresses:

J. Sam Scoville, Esq.
P. O. Drawer 1107
Beaufort, SC 29901-1107
Attorney for Respondent
843-524-3109

Charles J. Baker III, Esq.
P. O. Box 999
Charleston, SC 29402-0999
Attorney for Defendants Matyusheky, CODA & Varg
843-722-3400

This 15th day of December, 2011,



JOSEPH C. SUN, pro se
P. O. Box 2544
Bluffton, SC 29910
843-227-0963

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) CASE NO. 11-CP-07-2546

Joseph Sun,

Plaintiff,

v.

Olesya Matyushevsky, Citizens Opposed to
Domestic Abuse, Christine Varg and
Liling Sun,

Defendants.

ANSWER TO AMENDED COMPLAINT

Defendants Olesya Matyushevsky ("Matyushevsky"), Citizens Opposed to Domestic Abuse ("CODA") (incorrectly identified in the Complaint as Citizens Opposing Domestic Abuse), and Christine Varg ("Varg"), answering the Amended Complaint of the Plaintiff filed March 26, 2012, allege and say that:

FIRST DEFENSE

Matyushevsky, CODA and Varg deny all allegations not hereinafter specifically admitted and further incorporate all paragraphs of their Answer filed July 19, 2011, as may be applicable hereto. As to the correspondingly numbered paragraphs of the Amended Complaint, Matyushevsky, CODA and Varg respond as follows:

27. Matyushevsky, CODA and Varg deny the allegations of Paragraph 27 relating to their actions. They lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 27 and therefore deny the same.

28. Matyushevsky, CODA and Varg admit so much of Paragraph 28 as alleges that Matyushevsky presented to Plaintiff's divorce attorney the title to the 2009 Toyota Corolla car,

which was obtained from Liling Sun, so that it could be placed in the name of Liling Sun in accordance with the order of the Family Court. They further admit that a box of papers obtained from Liling Sun were kept in the CODA office for some period of time but deny that any such materials are still located there as Liling Sun removed them around the time of the final divorce decree. Matyushevsky, CODA and Varg deny all other allegations of Paragraph 28 relating to their actions. They lack knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 28 and therefore deny the same.

SECOND DEFENSE

The Court lacks subject matter jurisdiction of matters that were litigated in the Family Court for Beaufort County.

THIRD DEFENSE

Plaintiff's claims are barred by the doctrines of collateral estoppel and/or res judicata.

FOURTH DEFENSE

Plaintiff has failed to mitigate his damages as required by law.

FIFTH DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

SIXTH DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

SEVENTH DEFENSE

Plaintiff's claims are barred by the doctrine of judicial estoppel.

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrine of settlement and release.

NINTH DEFENSE

The Complaint fails to state facts sufficient to constitute a cause of action.

TENTH DEFENSE

Plaintiff's claims may be barred by applicable statutes of limitations.

ELEVENTH DEFENSE

Any alleged defamatory statements were true or substantially true.

TWELFTH DEFENSE

Any alleged defamatory statements were subject to an absolute or qualified privilege.

THIRTEENTH DEFENSE

Matyushevsky, CODA and Varg are immune from liability to third persons arising out of the performance of legal services for their client.

FOURTEENTH DEFENSE

Plaintiff is barred from recovering punitive damages by operation of S.C. Code §33-56-180.

FIFTEENTH DEFENSE

The amount of Plaintiff's recovery of actual damages may not exceed the limitation on liability contained in the South Carolina Tort Claims Act by operation of S.C. Code §33-56-180.

SIXTEENTH DEFENSE

Plaintiff may not recover from Matyushevsky or Varg unless their conduct was reckless, willful or grossly negligent by operation of S.C. Code §33-56-180.

SEVENTEENTH DEFENSE

Plaintiff's Amended Complaint does not comply with the Court's ruling.

RESERVATION AND NON-WAIVER

Matyushevsky, CODA and Varg reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

WHEREFORE, having fully answered the Amended Complaint, Defendants Olesya Matyushevsky, CODA and Christine Varg pray that the same be dismissed with costs, including reasonable attorneys' fees, and for such other and further relief as the Court may deem just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Charles J. Baker III (S.C. Bar No. 486)
5 Exchange Street
Post Office Box 999
Charleston, SC 29402-0999
Telephone: (843) 722-3400
cbaker@wcsr.com

- and -

CARLOCK COPELAND & STAIR, LLP

Jackson H. Daniel III (S.C. Bar No. 70308)
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
jdaniel@carlockcopeland.com

*Attorneys for Defendants Olesya Matyushevsky,
Citizens Opposed to Domestic Abuse and Christine Varg*

CHARLESTON, SC
April 19, 2012

PRENUPTIAL AGREEMENT

This Prenuptial Agreement is made this 26th day of April, 1999, between Joseph Chakyang Son (hereinafter referred to as "the first party") and LiLing Xie (hereinafter referred to as "the second party");

WITNESSETH

WHEREAS, the parties hereto intend to be married on May 14, 1999; and,

WHEREAS, the first party and the second party both have no or negligible net worth; and,

WHEREAS, the first party is expecting to inherit certain property and money from several relatives; and,

WHEREAS, each of the parties understands that the statutory rights and obligations conferred by law upon each in the property and estate of the other by virtue of their marriage may change any such time as the parties change their domicile; and,

WHEREAS, the parties, to promote marital tranquility, desire to fix, limit and determine by this Agreement the interests, rights and claims that may accrue to each of them in certain property as specified herein and estate of the other by reason of their marriage, or in the event of marriage difficulties herein referred to, or in the event of death, and to accept the provisions of this Agreement, in the areas specified herein only in lieu and in discharge, settlement and satisfaction of any and all interests, rights and claims that otherwise each party might or could have under the law in areas specified herein, in and to the property and estate of the other, both before and after the death of the other; and,

WHEREAS, nothing in this Agreement shall be construed to impose any legal obligation upon either party to support the children of the other party; and,

WHEREAS, this Agreement is entered into in consideration of the marriage of the parties, and its effectiveness is expressly conditioned on such marriage between the parties actually taking place; and if for any reason, the marriage is not consummated, this Agreement shall be of no force or effect

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound hereby, the parties agree as follows:

1.

[1] This Agreement was drawn by both parties based upon a legal form obtained from legal reference recommended by attorneys. [2] The second party acknowledges that she has been advised and urged by the first party to have an attorney of her choosing to review this Agreement and independently counsel her as to her rights and the legal effects of this Agreement. [3] The second party further acknowledges that she has had full opportunity to read and review this Agreement and has signed it freely and voluntarily.

2.

[4] Each party represents and warrants to the other that each is aware of the effect of this Agreement; and they understand the consequences of this Agreement; [5] that they have fully disclosed to each other all pertinent information concerning their assets, income, liabilities and financial status; [6] and that each party is aware of the other party's assets, income, liabilities and financial status, including the nature, composition and worth of all assets, location of all assets, any claim against any assets and the nature and amount of all liabilities; and that it is understood that the figures and amounts are approximately correct.

3.

Each party agrees that any and all liabilities, indebtedness, encumbrances, liens, debts and obligations in his or her name, guaranteed by him or her, or assessed against any property for which he or she is otherwise liable (whether personal or contingent) are his or her sole, independent and separate liabilities and obligations and they shall individually, independently and separately pay, resolve or satisfy same.

4.

Each party agrees that any monies and/or properties received by the parties individually through gift or inheritance during their marriage, shall be considered premarital property of said party and the other party shall not make any claim to it. Earned income of each party in any form, and all household goods, furniture and automobiles acquired after the date of this agreement shall not be considered premarital property, except items acquired with premarital funds.

5.

(A) For the purpose of this agreement, a "termination of the marriage" shall be deemed to have occurred upon:

(1) On the date that the parties separate or cease cohabitation incident to the subsequent institution or a judicial action concluding with the grant of a divorce; or,

(2) On the date that the parties separate or cease cohabitation incident to the subsequent institution of a petition for separate maintenance or similar action concluding with the entry of a judgment or agreement providing for separate maintenance or similar relief.

(B) In the event the parties reconcile or resume cohabitation before the entry of a divorce

decree or a decree of separate maintenance, then the marriage shall not be deemed to have terminated.

(C) This agreement shall be revived and considered continuing, by the remarriage between the two same parties, or their reconciliation or resumption of cohabitation after the entry of the decree of separate maintenance or a decree of divorce.

6.

In the event that the marriage terminates, each party shall be entitled to retain, free and clear of any right, title, claim or interest of the other party, that person's premarital property.

7.

It is each party's intention that, should the marriage terminate by divorce or judgment of annulment or separation agreement, each party shall rely solely upon his or her own rights and obligations as to maintenance, necessities, and support. No alimony of any kind will be allowed.

With respect to liabilities in the event of a termination of the marriage, each party shall be liable for any debts or obligations incurred by that party for their separate benefit. With respect to unsecured, mutually beneficial liabilities, each party shall be liable therefore in the same ratio as their individual incomes and financial contributions to the marriage bears to the total taxable income over the course of the marriage.

Each party is not required to use premarital assets or gift or inheritance each received during the marriage, for the purpose of acquiring, improving, adding to or enhancing joint assets.

8.

It is the intent of the parties that this Agreement concern only premarital property as defined above, and property individually received through gift or inheritance during their marriage, and the

disposition of those property upon death or dissolution of the marriage, and the division of assets and liabilities as specifically noted herein.

9.

This agreement contains the entire agreement of the parties with respect to the matters set forth above. The parties acknowledge that there are no representations, warranties, promises nor undertakings of any kind or nature which have been made to induce either party into making this Agreement except as expressly set forth in this Agreement; and neither of the parties shall assert there is any other Agreement, oral or written, existing between them. No oral statement or prior written matter outside this Agreement shall have any force or effect.

This Agreement shall not be subject to amendment, modification, discharge or termination except in writing signed by both parties with the same formalities required for the execution of this original Agreement.

10.

If any portion of this Agreement shall be held invalid or unlawful by any court of competent jurisdiction, the remainder of this Agreement shall nevertheless remain valid and enforceable according to its terms. The parties agree to do all acts and execute all additional documents reasonably necessary to effectuate the intent of the parties as set forth in this Agreement.

11.

The parties hereby agree that neither party will contest the other party's Last Will and Testament with respect to the other party's premarital property.

12.

This Agreement shall be binding upon the heirs, assigns executors and administrators of

each of the parties

13.

This Agreement shall be deemed enforceable in any state where the parties reside at the time the marriage terminates, including community property states, and shall be enforceable therein according to the terms of this Agreement.

14.

This Agreement shall be construed in accordance with the laws of the states of Georgia, without giving effect to the choice of law provisions thereof. Both parties acknowledge that in any action or proceedings in any jurisdiction before any tribunal or arbitrator where this Agreement, its enforceability, its lawfulness, the obligations and rights thereunder, the terms and conditions thereof, or the meaning thereof, are at issue or being considered or contested, they will request the Court, arbitrator, or other tribunal to apply only the internal law of the State of Georgia and not to apply the choice of law provisions thereof nor any concept of "false conflicts."

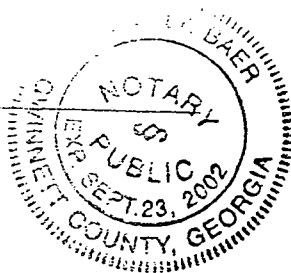
This 27th day of April, 1999.

Joseph C. Sun
JOSEPH C. SUN

Liling Xie
LILING XIE

Rene Schenfeld
Witness

Ramona Baer
Notary Public



Jasper County Sheriff's Office

Summary

Print Date/Time: 09/24/2010 14:43
Login ID: JJENKINS
Case Number: 2010-00002199

Jasper County Sheriff's Office
ORI Number: SC0270000

Case

Case Number: 2010-00002199
Location: 43 BROADVIEW DR
Ridgeland, SC 29936
Reporting Officer ID: 579048 - Mayers

Incident Type: Burglary
Occurred From: 09/18/2010 07:36
Occurred Thru: 09/18/2010 07:36
Disposition:
Disposition Date:
Reported Date: 09/18/2010 07:36 Saturday

Offenses

No. Group/ORI	Crime Code	Statute	Description	Counts
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Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
Suspect (S)	1	unknown	UNKNOWN		Unknown	Unknown	
Victim (V)	1	Suns, Joseph	43 BROADVIEW DR Ridgeland, SC 29936	(843)227-0963	Asian/Pacific Islander	Male	11/16/1946 63

Arrests

Arrest No.	Name	Address	Date/Time	Type	Age
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Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
09/18/2010	Stolen/Etc. (7)	Other-Property (77)			Personal Documents		

Vehicles

No.	Role	Vehicle Type	Year Make	Model	Color	License Plate	State
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Narrative
Burglary
16-11-312

Synopsis: On September 18, 2010 I Deputy Mayers responded to 43 Broad View Dr. in the county of Jasper in reference to a burglary.

Interview of Victim. Joseph Sun: Mr. Sun states that he came in on last night after being away from the residence for two months. Mr. Sun says that when he came to the house he noticed that someone had been in the house and he believes it may have been his wife. Mr. Sun states he has since touch the tools used to gain entry into the house and also secured the bolt cutters back outside the home. Mr. Sun states he believe it is his wife and an accomplice may have done this because nothing of any of value was stolen other than item that were of value to her. Mr. Sun states that he and his wife are going through a divorce and he knows that the documents he once had are the same documents that his estrange wife would need as well to give to her lawyer. Mr. Sun states he was sure everything was in the safe and in a file cabinet. Mr. Sun states that his safe was broken into to obtain those items. Mr. Sun did say that there are numerous tool of great value through this house that is still under construction, but none of those items have been disturbed. Mr. Sun states the house is now in his mother's name and he has power of attorney

Jasper County Sheriff's Office

Summary

Print Date/Time: 09/24/2010 14:43
Login ID: JJENKINS
Case Number: 2010-00002199

Jasper County Sheriff's Office
ORI Number: SC0270000

Suspect interview/ unknown at this time

Person of Interest: LiLing Sun: (843) 441-7575 : Mrs. Sun states that she just got off from working and she knows nothing about the documents and other items that were taken, but she will have her Lawyer call with questions.

Damage Property:
(1) Safe- 100.00

Stolen Items:

- (1) Keys - access to all homes and vehicles
- (2) Two Deeds to the houses (Rigdeland and Bluffton)
- (3) Two Car Titles both to Toyota Corolla (one of which is registered in Mr. Sun's mother's name)
Vin: 1NXBU4EE8AZ321301
- (4) Family Trust
- (5) Credit Card statements
- (6) - Check Books
- (7) \$1, 500.00 - Cash
- (8) Jewelry - \$2,000.00- Misc
- (9) Three gold Necklaces -100.00 each
- (10) Diamond Ring- \$1,000.00
- (11) Four Gold Coins and One Silver Coin -\$5,000.00
- (12) at least 10 Saving bonds unknown values that have been keep for a minimum of 50 yrs.

Officer Action : I Deputy Mayers spoke with a very emotional Mr. and Mrs. Sun in reference to this case Mr. Sun says he knows Mrs. Sun took or knows who took the items. and Mrs. Sun was unsure why her husband would even suspect her of taking the items. Mrs. Sun did however states that she does feel as though the house and items in the house are just as much hers as they are her husband. Mrs. Sun did state that she or her Lawyer will be either calling or coming in to make a statement. A case number was issued to both parties and both parties were instructed to make contact with there lawyers. I also explained to Mr. Sun no fingerprints would be obtained due to the fact that he has disturbed all the evidence. Mr. Sun states that he didn't understand that concept and his finger prints should be on the item in addition to his wife's. I have spoke to Mr. Sun numerous times , because he states he can not speak to his "distance" attorney on the weekends.

Supplement

Supplement : ON September 18, 2010 I Deputy Mayers spoke with Christina " Chris" Varg who is the representative of Mrs. LiLing Sun. Mrs. Varg was calling to confirm her client Mrs. Sun does have all of the documentation in question. A case number was also issued and Mrs. Varg was told to call if she has any other problems. Mrs. Varg did not specify how the documents were obtain only stating that the house was marital property .

Supplement 2

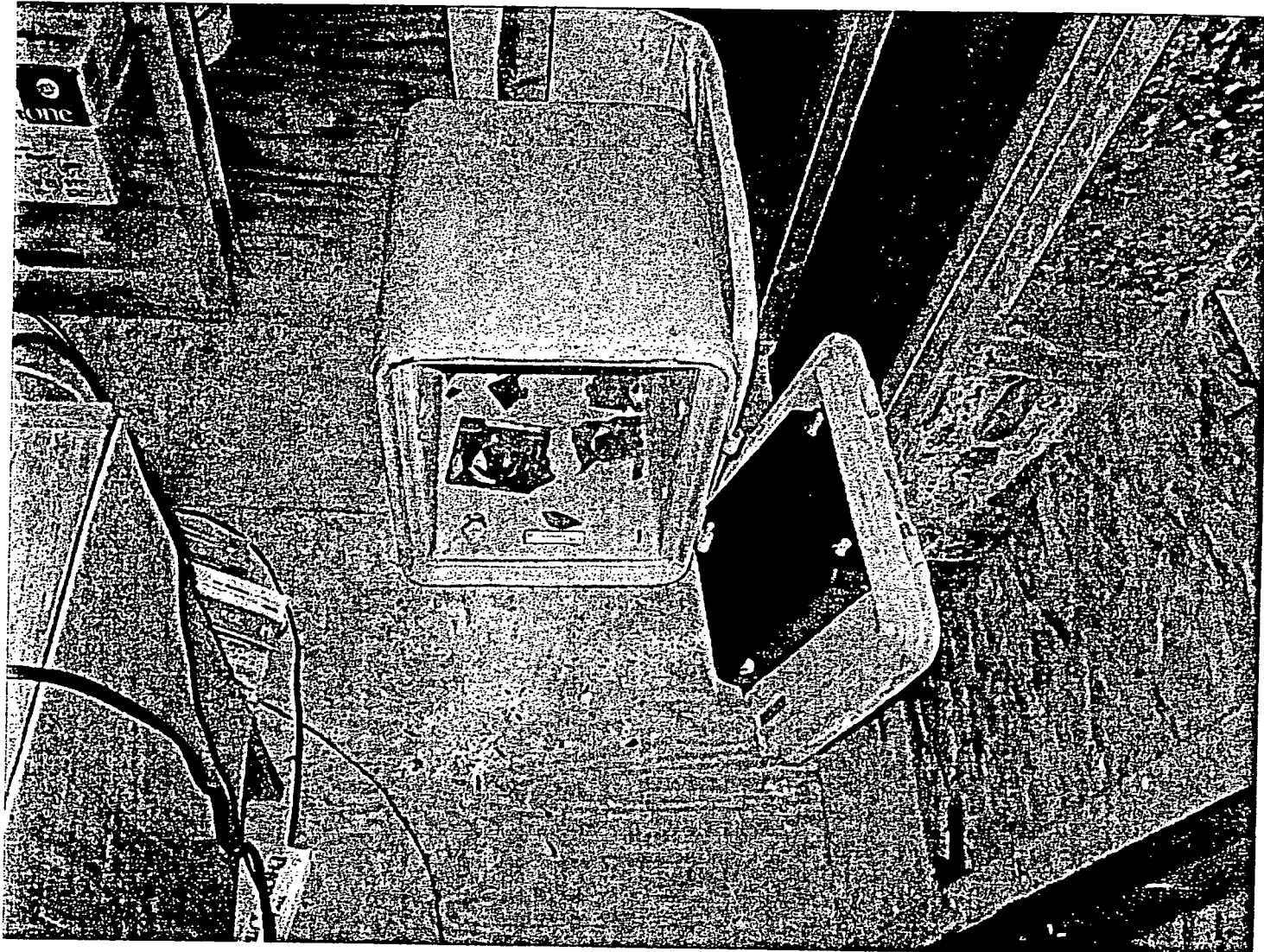
I Deputy Mayers spoke with Mr. Sun who states he can assure me that the house is not marital property and he wants his wife to be arrested for burglary , because he was arrested on marital property while in Bluffton, I Deputy Mayers explained to Mr. Sun's I am not aware of the specifics of that case in Bluffton and I believe that it would be best that he make contact with his Lawyer. Mr. Sun states he was not happy with my training and I had no idea what I was talking about. Mr. Sun states he then wanted me to investigate because he feels as though I am decimating because he is of Asian decent. I then apologized to Mr. Sun for him feeling that way and encouraged that he get in touch with my supervisor about this case as well.

Jasper County Sheriff's Office

Summary

Print Date/Time: 09/22/2010 15:02
Login ID: jjenkins
Case Number: 2010-00002199

Jasper County Sheriff's Office
ORI Number: SC0270000

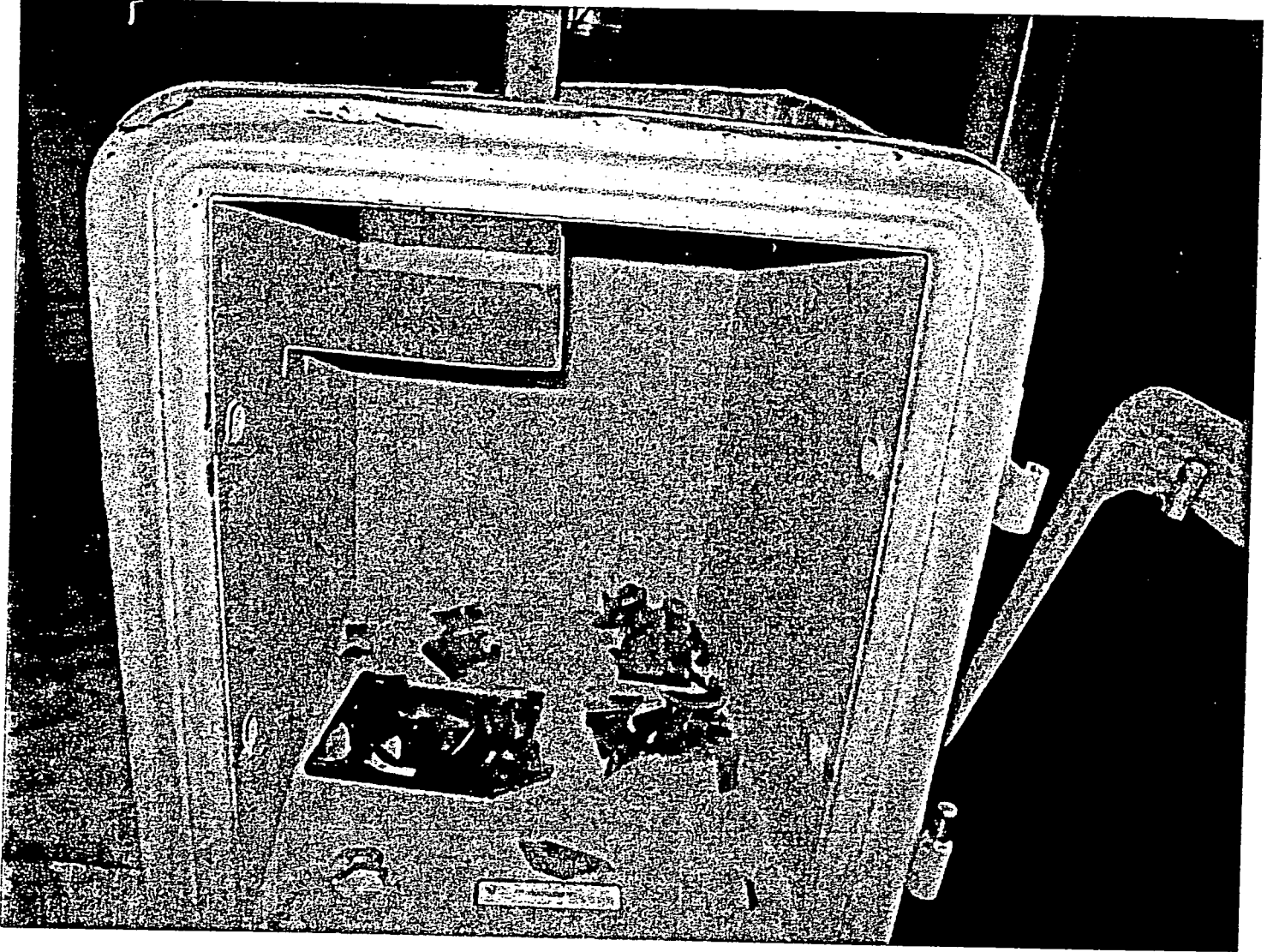


Jasper County Sheriff's Office

Summary

Print Date/Time: 09/22/2010 15:02
Login ID: jjenkins
Case Number: 2010-00002199

Jasper County Sheriff's Office
ORI Number: SC0270000



Routing:

- ☐ Chief
- ☐ Sheriff
- ☐ File

Jasper County Sheriff's Office

Summary

Print Date/Time: 09/22/2010 15:02
Login ID: jjenkins
Case Number: 2010-00002199

Jasper County Sheriff's Office
ORI Number: SC0270000



Jasper County Sheriff's Office

Summary

Print Date/Time: 09/22/2010 15:02
Login ID: jjenkins
Case Number: 2010-00002199

Jasper County Sheriff's Office
ORI Number: SC0270000



ITEMS TAKEN FROM KNOWLES ISLAND PLANTATION HOME UNDER CONSTRUCTION (committed twice between mid September 2010 and December 2010)

- (1) Sometime in September when Joseph Sun was incarcerated at the Beaufort County Detention Center caused by what Joseph claimed to be false and fabricated charges made by LiLing and her lawyer Matyuchevsky, LiLing, her legal assistant Christine Varg and her accomplice used forced entry through a back window, broke in the house located at Knowles Island Plantation owned by the Sun's family. After he was released from jail, Joseph Sun discovered the break in and burglary on September 18, 2010 and called 911. Jasper County Deputy Michelle Mayers came and made a report. (See Jasper County Report attached.)
- (2) A full size Sentry Safe was destroyed by aforesaid LiLing, Christine Varg and their accomplice. A sledge hammer, crow bar, wrenches, chisels and electric grinder belonging to Joseph at the Knowles Island home were seen near the broken safe. (See attached photos.) Joseph did not leave those tools there. All the contents inside the aforesaid safe was taken by Plaintiff LiLing Sun and Christine Varg. Some of those items are:
 - a/ The original Prenuptial Agreement between LiLing and Joseph Sun.
 - b/ Bank statements, check books and record of bank accounts in the name of Sun's Family Trust at Regions Bank, Carolina First, TD Canada Trust and South Carolina Bank and Trust.
 - c/ Passports of Joseph Sun and Abigail Sun.
 - d/ Original warranty deeds of all real property at Bluffton subdivision, Knowles Island, Daufuski Island and 19 E. Industrial Park, Ridgeland and other locations.
 - e/ Original titles to several cars and truck (2009 Toyota Corolla and 2010 Toyota Corolla. 1999 Ford Ranger), a 2001 Scout boat and construction machines.
 - f/ About 50 US Savings bond (\$50 each) which Joseph Sun bought when he was working at ATT before 1987.
 - g/ 3 gold chains and 1 pair gold ear rings - \$200.
 - h/ Several folders of personal and private papers of Joseph Sun's ex-wife.
- (3) A large key box (about 3"X12"X18") full of keys (over 100 keys) on cars, boats, trucks and construction machines and locks for storage.
- (4) Legal files, personal and financial papers in file cabinet and boxes. (About 1,000 pages.)
- (5) 5 gold coins (\$1,000 each) and 3 silver coins (\$200 each) given by Joe's father when he was alive. A gold watch (Omega) given by Joe's parents.
- (6) \$600 in cash.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) CASE NO. 2011-CP-07-2546

Joseph Sun,

Plaintiff,

v.

Olesya Matyushevsky, Citizens Opposed to
Domestic Abuse, Christine Varg and
Liling Sun,

Defendants.

**NOTICE AND MOTION FOR SUMMARY
JUDGMENT OF CHRISTINE VARG**

PLEASE TAKE NOTICE that Defendant Christine Varg ("Varg"), by her undersigned counsel, will move before the Presiding Judge, Fourteenth Judicial Circuit, Beaufort, South Carolina, at such place and time as the Court may appoint, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting her summary judgment on the grounds that there is no genuine issue of material fact and she is entitled to judgment as a matter of law.

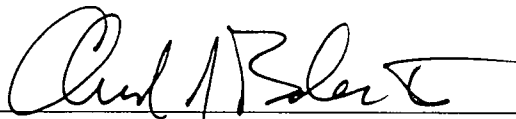
The prior order of this Court filed April 6, 2012, dismissed all claims against Olesya Matyushevsky ("Matyushevsky") and Citizens Opposed to Domestic Abuse ("CODA") as well as all claims against Varg except one claim related to her alleged participation in a break-in of a house located at 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina. The Court allowed Plaintiff leave to file an amended complaint against Varg only and involving this claim only. In filing his Amended Complaint, Plaintiff disregarded the Court's order and included allegations against Matyushevsky and CODA too. This motion does not address Matyushevsky and CODA since they have already been dismissed. Varg is entitled to summary judgment because it is undisputed that she did not participate in the alleged break-in.

This motion is based on the pleadings, the Affidavit of Liling Sun, the Affidavit of

Christine Varg, and such memoranda as may be presented to the Court.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Charles J. Baker III (S.C. Bar No. 486)
5 Exchange Street
Post Office Box 999
Charleston, SC 29402-0999
Telephone: (843) 722-3400
cbaker@wcsr.com

- and -

CARLOCK COPELAND & STAIR, LLP

Jackson H. Daniel III (S.C. Bar No. 70308)
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
jdaniel@carlockcopeland.com

*Attorneys for Defendants Oleysa Matyushevsky,
Citizens Opposed to Domestic Abuse and Christine Varg*

CHARLESTON, SC
June 7, 2012

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) CASE NO. 2011-CP-07-2546

Joseph Sun,

Plaintiff,

v.

Olesya Matyushevsky, Citizens Opposed to
Domestic Abuse, Christine Varg and
Liling Sun,

Defendants.

AFFIDAVIT OF LILING SUN

Personally appeared before me, Liling Sun, who, being duly sworn, deposes and says that:

1. I am a resident of the State of South Carolina and am over the age of 21. I give this affidavit freely and voluntarily.

2. I was formerly married to Joseph Sun, the Plaintiff in this action. I began proceedings on April 21, 2009, Case No. 2009-DR-07-628, which led to a final Decree of Divorce dated October 13, 2010.

3. During the divorce proceedings, I claimed an interest in certain properties, including two houses where Joseph and I had lived at various times during the marriage located at 18 6th Avenue, Bluffton, South Carolina, and at 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina.

4. Joseph's mother, Ah Tsao Sun, became a party to the divorce proceedings because she claimed she owned both properties and they were not marital property. As part of the settlement of all marital property issues approved by the family court in the Decree of Divorce, Mrs. Sun paid me \$75,000 and I executed quit-claim deeds to both properties.

5. On or about September 16, 2010, before signing the property settlement agreement, I went to the Knowles Island house and removed some of my personal items, including various papers.

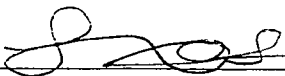
6. Christine Varg is an employee of Citizens Opposed to Domestic Abuse ("CODA"), whose help I had sought as a victim of domestic violence. Ms. Varg assisted my attorney Olesya Matyushevsky, also a CODA employee, during my divorce proceedings. Ms. Varg and Ms. Matyushevsky did not go with me to the Knowles Island house and were not present when I removed my personal items.

7. A deputy with the Jasper County Sheriff's Office called me on or about September 18, 2010, about a break-in at the Knowles Island house. I told him I would have my lawyer call him. I then called CODA, spoke to Ms. Varg, and requested that she or Ms. Matyushevsky call the deputy.

8. The following Monday, September 20, 2010, I took some of the personal papers I got from the house to CODA's offices and left them with my attorney, Ms. Matyushevsky. I picked up the papers from CODA's offices around the time of the final divorce decree.

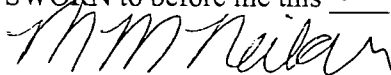
9. I have not been back to the Knowles Island property at any time since September 16, 2010.

FURTHER AFFIANT SAITH NOT.



Liling Sun

SWORN to before me this 2 day of May 2012.



Notary Public for South Carolina
My Commission Expires: 9/28/21

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) CASE NO. 2011-CP-07-2546

Joseph Sun,

Plaintiff,

v.

Olesya Matyushevsky, Citizens Opposed to
Domestic Abuse, Christine Varg and
Liling Sun,

Defendants.

AFFIDAVIT OF CHRISTINE VARG

Personally appeared before me, Christine Varg, who, being duly sworn, deposes and says that:

1. I am a resident of the State of South Carolina and am over the age of 21. I give this affidavit freely and voluntarily.

2. I am an employee of Citizens Opposed to Domestic Abuse ("CODA"). I am not a lawyer, but my duties include assisting CODA's staff attorney, Olesya Matyushevsky, in legal matters involving women who have sought help from CODA.

3. In that capacity, I assisted Ms. Matyushevsky in her representation of Liling Sun in divorce proceedings adverse to Joseph Sun, Case No. 2009-DR-07-628.

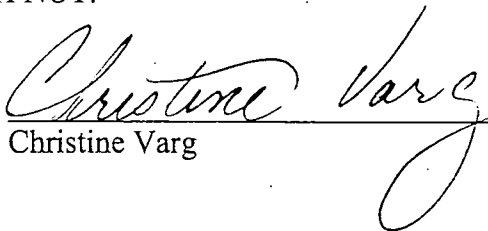
4. I did not go with Liling on September 16, 2010, to the real property located at 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina. In fact, I have never been on the property or inside the house located there. I did not know ahead of time that Liling was going to the property.

5. Liling called CODA and talked to me on September 18, 2010, after she received a call from a deputy with the Jasper County Sheriff's Office about a break-in at the Knowles Island

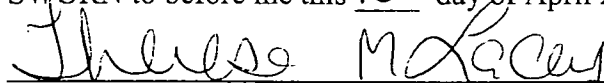
house. Liling and I talked about what had occurred. She told me she had gone to the house and removed papers from a safe. I then called the deputy and confirmed that Liling did have papers from the Knowles Island house.

6. I was not at CODA's offices on the following Monday, September 20, 2010, but was told that Liling brought these papers there on that date. The papers stayed in a box in my office for some period of time. Liling picked up the papers from CODA's offices around the time of the final divorce decree, which was entered on October 13, 2010.

FURTHER AFFIANT SAITH NOT.


Christine Varg

SWORN to before me this 16th day of April 2012.


Theresa M. Lacey

Notary Public for South Carolina

My Commission Expires: 2-12-13

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JOSEPH C. SUN,
Plaintiff,

v.

OLESYA MATYUSHEVSKY, ET AL,
Defendants.

) IN THE COURT OF COMMON PLEAS
) 14th JUDICIAL CIRCUIT
)

) CASE NO. 2011-CP-07-2546
)

) AFFIDAVIT OF JOSEPH SUN
)
)

COMES NOW, JOSEPH SUN, having personally appeared before the undersigned officer,
duly authorized by law to administer oaths, and after being duly sworn, deposes and says:

1. My name is Joseph Sun and I am the Plaintiff in this case. I make this affidavit
based upon my personal knowledge in response to the Motion for Summary Judgment filed by
Defendant Christine Varg. I am of sound mind and competent to testify.

2. After I was released on supersedeas in early September 2010, I went back to my
home which was still under construction at Knowles Island Plantation in Ridgeland, SC. I found
that the rear window was broken and the manlift was full of debris and turned over equipments -
buckets, tile saw and ladder, etc. I knew the house was burglarized, so I called the Jasper County
Sheriff. After I went in the house with my keys, I found that there were damages inside the house
which was only framed with steel structure at the time. I found my large key box was missing, file
cabinet was opened and in great disorder, and my heavy duty Sentry Safe was destroyed with the
door knocked off. It was full of valuables before, but it was then empty with all the contents
removed and stolen.

3. Deputy Michelle Mayers came shortly and made a report. She also took several

photographs. Several days later, I went by the Jasper Sheriff's Office and obtained a copy of the report where it said on the "supplement" that "on September 18, 2010, Christine Varg called to confirm her client Mrs. Sun does have all the documents in question." But at that time, I have not told anyone in detail what documents were stolen. Therefore, Christine Varg knew more about my missing documents than I did on September 18, 2010. (Copy of the Report is attached as Exh. A.)

4. As shown on the photos taken by the Deputy, my Sentry Safe was big and heavy. The door was knocked off. The safe was bolted to the floor with ½ in. bolts which was sawed off. There were sledge hammer, electric grinder and crow bar and other tools near the destroyed safe when I first saw it on September 18, 2010. Those tools were in the basement cabinets. LiLing Sun is a small and weak woman as I had lived with for almost 10 years. Christine Varg is about 5 ft. 10 in. and weighs about 200 lbs. According to the transcript of a Rule to Show Cause Hearing, Christine Varg always accompanied LiLing to help her, including going in my marital home and found a cup of warm coffee in my office. (A page of the transcript is attached as Exh. B.)

5. I have read the affidavit of LiLing Sun filed with Defendant Varg's motion for summary judgment. LiLing can hardly speak or write English. That affidavit was clearly not her testimony. It is only a paper prepared by Defendant Varg's legal counsel and LiLing signed it without understanding what it really said. LiLing's affidavit contains several false testimony. LiLing said on or about September 16, 2010, before signing the property settlement agreement, she went to Knowles Island house and removed some of her personal items. That is preposterous in that if those were her "personal items", her lawyer could easily called the law enforcement to escort her to take whatever she claimed as hers. But she broke the rear window to get in my home in secret, then asked her accomplice including Christine Varg to use sledge hammer, electric grinder and crow

bar to destroy my safe and damage the wall and floor of the house during their burglary.

6. The truth is that not one items stolen by LiLing with the help of CODA, Matyushetky and Varg was her "personal items." Just to name a few of the items LiLing stole from my safe: a stack of US Savings Bond I bought when I was working for AT&T in 1980s, about 20 years before I met LiLing. Original legal Papers (including the Prenuptial Agreement) and warranty deeds on property titled in the Suns Family Trust which LiLing did not even know existed. Check books and account statement of my mother's account in Canada, and the Family Trust, etc. There were many more stolen items and valuables which LiLing clearly has no right to.

7. LiLing testified in her affidavit (Paragraph 6) that Varg and Matyushetky did not "go with her" to the Knowles Island house and were not present when she removed her "personal items." I will explain in the hearing that LiLing was playing words in her affidavit which was prepared by Varg's lawyer. But the affidavit does not eliminate Christine Varg's conspiracy, and aiding and abetting of the burglary and theft by taking of my property committed by LiLing. Under cross examination, LiLing will expose the fact that her burglary and theft was coached, aided and abetted by Counsel Matyusheky and Varg.

8. Pursuant to the Sixth Amendment of the Constitution, I have the right to cross examine and confront the witnesses against me. I have sent notices of deposition to Christine Varg and LiLing Sun's counsels (see copies of letter attached), but there has been no response so far. I intend to schedule the deposition soon and if they fail to appear, I will file motion to compel discovery and ask to reimburse expenses.

9. Defendant Christine Varg testified in her affidavit (Paragraph 4) that "She did not go with LiLing on September 16, 2010 to my home at Knowles Island Plantation." But there were

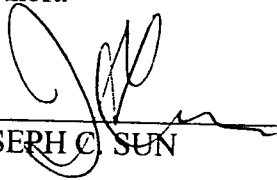
several other crimes of burglary committed by LiLing on other days, and there are other ways of conspiracy, aiding and abetting in the commission of crime. Varg could be the "look out" person standing on the street to help LiLing commit the burglary. Varg could also give LiLing advice where to find help to destroy my Sentry Safe. If Varg is innocent, she would advise LiLing to return all my Savings Bonds, legal papers on the Family Trust and my mother check books and bank statement in Canada (and many more items) after she found out LiLing and accomplice destroyed my safe during the burglary. Most of all, she would help to get LiLing's "personal items" lawfully by getting law enforcement to escort them to my house and go in from the front door to get LiLing's "personal items" instead of acting thieves and destroying property.

10. Again, the Sixth Amendment of the Constitution guarantee my right to confront and cross examine witnesses against me. I sent Christine Varg's counsel a notice of deposition, but I have not heard from him after almost a month. I intend to file motion to compel discovery.

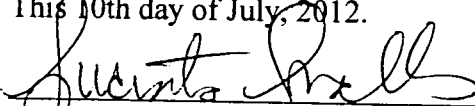
11. No Defendant can simply say that "I didn't do it" or "I was not there" and expect to be acquitted. Defendants Varg and LiLing tried to claim that their burglary and theft was committed before the divorce decree on October 13, 2010, therefore, it is a Family Court matter. But they have committed fraud, burglary and theft, breeched the Prenuptial Agreement, causing tens of thousands of dollars damages to Plaintiff's house and person, and Family court has no jurisdiction to award damages on personal injury. These defendant testified in their affidavits that after the burglary and the divorce decree, they were moving the stolen property from one place to another in their attempt to hide them from Plaintiff. Their accessory after the fact was committed after the divorce decree up to this date. They still are refusing to return all the stolen property to Plaintiff.

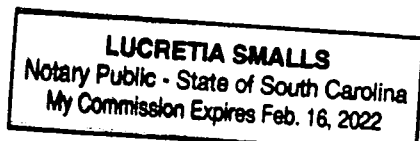
12. Some time after the divorce decree was issued (near the end of 2010), LiLing offered

to swap the stolen key box which was destroyed by her, for the automobile license tag to the 2009 Toyota Coroll she was driving at that time. The car was still title in my mother name and LiLing could not get a car tag. That swapping proved LiLing had committed theft by taking. Then Defendant Matyusheky produced the car title of the 2009 Corolla which was still titled in my mother's name and the title was kept in the Sentry Safe, to my Divorce Counsel Ken Tootle and demanded signature to transfer the title to LiLing. Therefore, Defendants Matyusheky, Varg and CODA are all guilty of involvement in the burglary and theft.


JOSEPH C. SUN

Sworn and subscribe to before me
This 10th day of July, 2012.


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I certify that I have this date served Defendant Varg a copy of Affidavit of Joseph Sun by email to: cbaker@wcsr.com and by depositing a copy of same in the United States Mail, postage prepaid to the following addresses:

Charles J. Baker III, Esq.
P. O. Box 999
Charleston, SC 29402-0999
843-722-3400

This 10th day of July, 2012,


JOSEPH C. SUN

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	14th JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2011-CP-07-2546
JOSEPH C. SUN,	)	
Plaintiff,	)	
	)	
v.	)	<u>MOTION FOR CONTINUANCE</u>
	)	
OLESYA MATYUSHEVSKY, ET AL,	)	
Defendants.	)	

Defendant Christine Varg served her Motion for Summary Judgment on Plaintiff and sent Plaintiff a letter setting a hearing on Thursday, July 12, 2012 at 9:00 a.m. in the Beaufort County Courthouse before the Honorable Marvin H. Duke, III, Master-In-Equity. In her motion, Defendant Varg attached an affidavit of Defendant LiLing Sun and one of herself.

In both aforesaid affidavits, these defendants made either false, deceptive or incomplete testimony regarding their wrongful acts against the Plaintiff which can give them a false appearance of innocence of wrong doing, when in fact, all the defendants orchestrated, conspired and aided and abetted each other in the break in, burglary, theft and cover up, as part of the scheme of all their wrongful acts against the Plaintiff. The destruction of Plaintiff's Sentry safe and theft by taking of all Plaintiff's valuables as briefly alleged in Plaintiff's Amendment to Complaint and/or to Amended Complaint filed on March 26, 2012 is only a tip of the iceberg of the massive wrongful acts these defendants have committed against the Plaintiff. (A copy of the Sheriff's Report is attached as Exhibit A.) The truthfulness as defendant Varg has testified and the missing facts regarding Defendant Varg's involvement in the aforesaid wrongful and/or criminal acts against the Plaintiff can only be elicited through thorough pretrial discovery and cross examination.

Plaintiff has the right under the Constitution to cross examine Christine Varg and LiLing

Sun. LiLing Sun has been dismissed from the case SO FAR, and her dismissal is still on appeal at the Court of Appeals. But because LiLing Sun has furnished an affidavit in her attempt to acquit Defendant Varg, she is now subject to cross examination by the Plaintiff under the provision of the Constitution.

The pretrial discovery in this case is not even close to being completed because this case has been inundated with motions to dismiss filed by the defendants and their appeals, resulting in no pretrial discovery having been conducted. Determination of any summary judgment without first allowing pretrial discovery is improper, particularly in this case where the defendants have presented two affidavits of themselves. Plaintiff has served Defendants Varg and LiLing Sun Notices of Deposition. (Copies of Notices are attached as Exhibit B and C.) These deposition should be allowed to complete. Additional discovery may be necessary.

Wherefore, the hearing on the motion for summary judgment filed by Defendant Varg should be continued until discovery is completed in this case.

Respectfully submitted,



JOSEPH C. SUN, pro se
18 Sixth Avenue
Bluffton, SC 29910
843-227-0963

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JOSEPH C. SUN,
Plaintiff,

v.

OLESYA MATYUSHEVSKY, ET AL,
Defendants.

) IN THE COURT OF COMMON PLEAS
) 2012 MAR 26th 14h 31m 30s JUDICIAL CIRCUIT

) JUDGE J. L. HARRIS
) BEAUFORT COUNTY, S.C.
) CLERK OF COURT
) CASE NO. 2011-CP-07-2546

) PLAINTIFF'S AMENDMENT
) TO COMPLAINT AND/OR
) TO AMENDED COMPLAINT

PLAINTIFF JOSEPH SUN, pursuant to instruction from the court on March 13, 2012 allowing him, in 15 days, to file an amendment to his complaint and shows the court as follows:

(1) On the issue of Break in of Plaintiff's home and Theft of Plaintiff's property on Page 8 of the original complaint, the amended allegations are as follows:

BURGLARY OF PLAINTIFF'S RIDGELAND HOME AND THEFT OF HIS PROPERTY

(27) Some time in about September 2010 and at least one more time afterwards, Defendants LiLing, Matyushevsky and Varg under the guise and condonation of CODA conspired in, plotted and actually committed several burglary of Plaintiff's home at Knowles Island Plantation in Ridgeland, SC. Defendant Matyushevsky instructed and/or advised Defendants LiLing and Varg to falsely claim that they were breaking in "marital property" to escape criminal prosecution even though the house rented by Plaintiff, was titled in the name of Plaintiff's mother Ah Tsao Sun. Defendants LiLing and Varg broke the rear window of the house after climbing up a mechanical lift about 6 feet high and entered the house on top of a full basement. While climbing up the lift, these defendants pushed off numerous tools and equipments, causing damages to the lift, equipments and the rear windows.

After defendants LiLing and Varg entered Plaintiff's residence, they located

Plaintiff's Sentry Safe, file cabinet and key box and stole all the contents. Plaintiff's heavy duty safe was anchored to the floor. Defendants accomplished theft by taking by using electric grinder, crow bar, sledge hammer and other tools found in Plaintiff's basement to destroy the safe and successfully removed the door to the safe, after causing extensive damages to the wall and floor and structure of the house. After taking Plaintiff's numerous files, all the contents in the safe and key box with over 100 keys inside, these defendants also opened Plaintiff's computer console, removed and stole the hard drive.

(28) The valuables stolen by these defendants included but not limited to, cash, check books, financial documents, jewelry, collectibles, original warranty deeds, titles to cars, boats and construction equipments, large amount of savings bonds which Plaintiff acquired over 20 years ago, numerous legal papers and the original Prenuptial Agreement between Plaintiff and Defendant LiLing. Defendant Varg then transported all the stolen items to CODA where Defendant Matyushevsky sorted out the legal papers and took the Title to the 2009 Toyota Corolla to Plaintiff's Divorce Counsel Ken Tootle and demanded Plaintiff to sign it over to LiLing. After stealing Plaintiff's key box, Defendants Varg and LiLing broke the key box and removed numerous keys including the keys to the 2009 Toyota and the car Plaintiff was driving. Several weeks later, LiLing produced the broken key box and made an exchange with Plaintiff for the license tag to the 2009 Toyota.

All remaining items which the Defendants had stolen from Plaintiff's home are still stored at CODA or secret locations designated by the Defendants. Plaintiff who is the lawful owner is entitled to recover all items and property stolen by the defendants from his home located at Knowles Island Plantation. In addition, Plaintiff is entitled to recover from

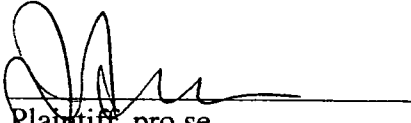
all the Defendants, special damages of \$50,000.00 for the repair and/or replacement of tools and equipments and damages to the house caused by Defendants several burglaries.

- (2) The aforesaid allegations should replace the paragraphs 28 - 30 in the proposed Amended Complaint and/or paragraphs 27 and 28 in the original complaint under the original cause of action of Break in and Burglary of Plaintiff's Home.
- (3) An additional prayer of relief is added to the Complaint and/or the Amended Complaint to specifically require the defendants to return all items taken from Plaintiff's home at Knowles Island Plantation in Ridgeland, SC.

This 23rd day of March, 2012.

Respectfully submitted,

JOSEPH C. SUN


Plaintiff, pro se
P. O. Box 2544
Bluffton, SC 29910
843-227-0963

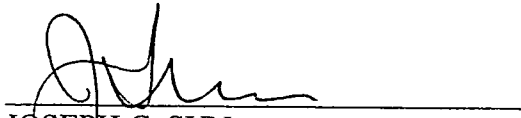
CERTIFICATE OF SERVICE

I certify that I have this date served all the Defendants a copy of Plaintiff's Amendment to Complaint, and/or to Amended complaint, by depositing a copy of same in the United States Mail, postage prepaid to the following addresses:

J. Sam Scoville, Esq.
P. O. Drawer 1107
Beaufort, SC 29901-1107
843-524-3109

Charles J. Baker III, Esq.
P. O. Box 999
Charleston, SC 29402-0999
843-722-3400

This 24th day of March, 2012.


JOSEPH C. SUN

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
2011-CP-07-2546

Joseph C. Sun,
Plaintiff

VS -

Olesya Matyushevsky,
Defendant

TRANSCRIPT OF RECORD
Motions Hearing

October 19, 2011

BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

 ORIGINAL

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

John Samuel Scoville, Attorney at Law
Attorney for Defendant

Joseph C. Sun
Pro Se, Plaintiff

I N D E X

NO WITNESSES INTRODUCED

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EXHIBITS

NO EXHIBITS INTRODUCED

1 (Whereupon Hearing began at approximately 12:20 PM)

2 THE COURT: Gentlemen.

3 MR. JOHN SCOVILLE: Per the Court's instructions -
4 -- we filed this motion to dismiss in response to Mr.
5 Sun's lawsuit. The two parties were divorced in
6 October of last year. Looking at the complaint, all of
7 the factual allegations pre-date the order of divorce.
8 All of those issues either were raised in the divorce
9 or should have been raised in the divorce.

10 He alleges in the complaint adultery. He alleges
11 in the complaint there are -- this is in the complaint
12 we are here for today -- he alleges that my client,
13 Mrs. Sun, stole marital property or stole personal
14 property from the marital home prior to the divorce and
15 following the divorce.

16 He alleges, basically, that she and Citizens
17 Opposed to Domestic Abuse, engaged in a conspiracy to
18 gain an upper hand in that divorce.

19 I have for the Court, and I would ask for the
20 Court to take judicial notice of the final order of
21 divorce, as well as Mr. Sun's motion and affidavit in
22 support of a Rule to Show Cause following the divorce
23 and the Judge's order on the Rule to Show Cause.

24 If I may approach, Your Honor?

25 THE COURT: Please.

1 MR. SCOVILLE: Those are certified copies, Your
2 Honor and I have put tabs on pages that I think are
3 pertinent to this motion, if the Court will bear with
4 me just one moment ---

5 MR. JOSEPH C. SUN: Excuse me, I don't have a copy
6 of that ---

7 MR. SCOVILLE: I'm providing that now. The first
8 page, Your Honor, of the Decree of Divorce, you will
9 see that was entered October the 13th of 2010. Among
10 other things, the Court finds, each of the parties are
11 responsible -- this is on page eight, for their own
12 attorney's fees occurred in this action -- that's a
13 minor point but Mr. Sun is claiming he's entitled to
14 attorney's fees for that action and the present action
15 as part of his damages.

16 If you turn to page eleven of eleven on the order,
17 at the top of page number three it states, The party's
18 agreements is set forth and constitute a fair and
19 equitable resolution of all of the issues before this
20 Court.

21 Turn back to the first page of the order and it
22 outlines what the issues were before the Court. In the
23 very first sentence, Plaintiff commences action for
24 divorce, child custody, equitable division of marital
25 property and other relief.

1 The larger document I gave you is Mr. Sun's motion
2 in support of his Rule to Show Cause and I -- most of
3 it I don't think is relevant but I wanted to provide a
4 complete copy. Page -- it's actually page four of that
5 document is Mr. Sun's affidavit in support of that.

6 Look at paragraph three, it's the second half of
7 that page, he explains in his affidavit that in
8 exchange for seventy-five thousand dollars, my client,
9 Mrs. Sun in that divorce, quit-claimed her interest in
10 two properties. The Bluffton property and the Knowles
11 Island property. Which again are the subjects of his
12 case in Common Pleas.

13 Please let me know if I get ---

14 THE COURT: That's okay.

15 MR. SCOVILLE: All right. The last document that
16 I handed you was Judge Robert Armstrong's order
17 granting Mr. Sun the relief he requested in his Rule to
18 Show Cause. The second paragraph on the first page
19 mentions -- and I may have gotten ahead of myself in
20 referring to the motion -- it states, The defendant
21 alleges among other things that the defendants in that
22 case, including Mr. Sun, that the plaintiff is in
23 violation of decree of divorce, entered into by this
24 Court on October 13, 2010, by removing certain personal
25 property from the premises located at 18 et

1 cetera...the Bluffton property, if I may paraphrase,
2 and the Knowles Island property.

3 The date of that hearing was May the 4th, as you
4 will see on that first page, and the date the order was
5 filed was May the 12th of this year.

6 The Court, in this order, orders Mrs. Sun to
7 return certain property and orders that Mr. Sun be
8 allowed -- his designee -- be allowed to go to Mrs.
9 Sun's apartment and determine if there was anything
10 else.

11 The Court issued an order -- the Court was
12 exercising its jurisdiction over these matters at that
13 time. One month later Mr. Sun, after getting this
14 order, filed the present case alleging that he was
15 entitled to damages from Mrs. Sun for taking these
16 various pieces of property.

17 Our motion to dismiss is, number one, on the
18 grounds that the Family Court, not the Court of Common
19 Pleas, has exclusive jurisdiction over these matters.

20 Number two, that there's a prior -- prior pending
21 litigation between these parties on the same subject
22 matter, which is the divorce, and the Court has
23 continuing jurisdiction to enforce its orders and the
24 agreement of the parties.

25 And number three, that the plaintiff in this case

1 fails to state facts sufficient to constitute a cause.
2 of action as many of these allegations either aren't
3 civil causes of action -- some of them even appear to
4 be criminal causes of action -- for which the Court
5 could not grant relief.

6 And that's our motion, Your Honor.

7 THE COURT: Okay. Mr. Sun.

8 MR. SUN: If it please the Court, Your Honor.
9 First of all, I'd like to protect the record ---

10 COURT REPORTER: Can you speak up just a little,
11 please?

12 MR. SUN: I would like to protect the record for
13 my motion of continuance. There some newspaper article
14 obituary -- obituary of my mother's death which was had
15 my name written for the continuance, which was
16 scheduled October 4th and also I'm gonna ask the Court
17 to allow amendment to my complaint to add a cause of
18 action as to a loss of consortium of my mother, whose
19 death is proximate caused by the defendant's wrongful,
20 outrageous, wrongful act.

21 THE COURT: Okay, there can be no loss of
22 consortium between you and your mother. That's not
23 permitted. Okay.

24 MR. SUN: Can I go on, please. Your Honor ---

25 THE COURT: Sir, what I need to understand is when

1 did your mother pass away?

2 MR. SUN: Uh, pass away the -- the -- the end of
3 September.

4 THE COURT: And this--

5 MR. SUN: And, but my complaint has already
6 addressed the issue of the way that they put me in jail
7 with all kind of lies and about going to burglary my
8 mother's house, that is. And making unlawful phone
9 calls when I call to get visitation of my daughter and
10 so forth.

11 After put me in jail, then they start harassing my
12 mother. That was back all the way from 2010, I was in
13 jail a lot of times the year of 2010. I could not help
14 my mother. My mother was totally helpless. They were
15 trying to force my mother to give them some money.
16 That's the defendant conspiracy.

17 Now, the Family Court has a code section that is
18 stated very clearly, as a Court of limited
19 jurisdiction. It's only for divorces and issues
20 related for divorce. I put down the divorce and some
21 of the background just to address -- let the Court
22 knows about some of the facts before all these things
23 happen.

24 What they have done is totally outrageous. It's
25 something that, really, is unheard of. The lawyer --

1 the law -- CODA's legal assistant or lawyer -- probably
2 under instruction of the lawyer -- the CODA lawyer --
3 broke in my mother's house, cause that was my house at
4 the time cause I had no place to live because I -- my
5 ex-wife, uh, use a altered warranty deed in the
6 temporary hearing in divorce case to get the possession
7 of the marital home, which was actually my mother's
8 house.

9 She did it by -- they did it by sending me the
10 notice of hearing in the divorce case -- on the
11 temporary hearing -- the day before the hearing. One
12 day before, in the code section when the rule requires
13 at least four days so I have time to find a lawyer. I
14 went to the hearing with no lawyer.. At the divorce
15 hearing. That was back in 19 -- that was back in 2009.
16 And I -- I was totally unprepared. I was totally
17 unprepared. I didn't know what was going on and they --
18 then they pulled out a warranty deed that was altered
19 and filed to put the house in -- in -- in her name --
20 in my ex-wife's name. And her lawyer was flagging a
21 certified receipt of a -- uh, a -- certified mail
22 receipt of the original complaint which was about two
23 months back. And -- and -- and falsely claimed that
24 that was the service of the temporary hearing. So the
25 Judge didn't know anything so he say, Okay, go on. No

1 -- no continuance. I ask for continuance. All those -
2 - well, maybe it was in the divorce case -- a divorce
3 issue but it was not possible because first of all, I
4 was in jail afterwards because they claimed I made
5 unlawful phone calls and I was in the house --
6 burglarizing my mother's house. And she claim she lost
7 something. All that's totally -- I have nothing --
8 convicted of anything, okay. Because of that I
9 couldn't help her. They start writing letters, uh, to
10 uh, different law enforcement and another attorney,
11 including my own attorney that I'm a criminal --
12 involved in criminal activity. Would not specify what
13 kind of crime.

14 And of course, that's liable and slander. And of
15 course, I'll also address the issue of false arrest and
16 malicious prosecution in my complaint. And then as the
17 fraud is concerned, they got seventy-five thousand
18 dollars from my mother because -- because they said
19 that -- they twist all the facts about the house now is
20 in my name, so therefore ---

21 THE COURT: Is that as a divorce settlement or was
22 that ordered by the Court?

23 MR. SUN: It was a settlement. Now, but Your
24 Honor, let me point out one thing, respectfully. That
25 is the settlement in the divorce decree, it was not my

1 settlement. I had no part in it. Because you look at
2 the last page of divorce decree, signed by -- it's page
3 -- divorce decree have two parts. The first part is
4 the decree of divorce. The second part is a settlement
5 of property -- a settlement agreement. Okay. The
6 settlement agreement was only approved by my ex-wife
7 and my mother. I was not a part of it because my
8 divorce lawyer previously told me about a settlement I
9 object to. I said, No, I'm not gonna settle with that.
10 Because she's not entitled to anything. She had commit
11 adultery. She also all kind of fraud in this temporary
12 hearing to get the house -- temporary possession of the
13 house. And there are all these fraud about lies about
14 putting me in jail so that I could not tell the truth.
15 And so they were getting seventy-five thousand from my
16 mother. So that's a settlement, if you look at the
17 last page, Your Honor ---

18 THE COURT: Um hum.

19 MR. SUN: --- Of the settlement agreement which is
20 page seven of nine. Page seven of nine of the
21 settlement agreement in divorce case.

22 THE COURT: It's got your mother's signature.

23 MR. SUN: Yes, that's my mother's signature.

24 THE COURT: I understand.

25 MR. SUN: Who just passed away. They put so much

1 -- and I address some of the issue in my complaint.
2 That my mother, after they so much harassment, my
3 mother was ninety years old.

4 THE COURT: Did you appeal your divorce
5 settlement, your final divorce decree?

6 MR. SUN: Pardon me?

7 THE COURT: Did you appeal your final divorce
8 decree.

9 MR. SUN: Yes, um huh.

10 THE COURT: And what's the status of that?

11 MR. SUN: We're divorced. We're divorced ---

12 MR. SCOVILLE: Your Honor, I'm not -- I have seen
13 some correspondence between the Court of Appeals. Mr.
14 Sun, and I don't mean this personally, probably has
15 more litigation experience than anyone in this
16 courtroom today. And he appealed his -- he was found
17 in contempt of Court as I understand it early on in the
18 divorce. He appealed that. He later appealed -- I
19 think he didn't pay a filing fee and they sent it back
20 and it's been back and forth and then he appealed the
21 divorce agreement that -- including the settlement
22 agreement that he agreed to -- in the case that was
23 decided in October.

24 Last I recall, that appeal has not been, I guess
25 perfected is the word. They sent -- they were giving

1 him a second chance to pay the filing fee but I don't
2 know the current status of that.

3 MR. SUN: The appeal is not an issue before the
4 Court. The divorce decree I signed that. The Judge
5 asked us in the open court about what we agree on and
6 so forth, therefore the Judge granted an order of
7 divorce. So that part is not appealable. But the
8 other part is appealable -- is appealing is the
9 property issue. And also the -- all these wrongful
10 act that they have committed. They have committed --
11 they have commit these acts with the help of the
12 counsel, legal assistant, and so forth. Which the
13 divorce court could not possibly address and of course
14 unlawful arrest, malicious prosecution, uh, uh, liable
15 and slander, uh, liable and slander and uh, also theft
16 -- burglary of property, too.

17 As of this point, ex-wife and her lawyer are still
18 in possession --still have stuff that they stole from
19 my safe. They used -- because at a trial of the case I
20 would present that as evidence. That they used
21 sledgehammer and chainsaw and grinder to grind open my
22 safe -- it's a Sentry Safe -- a heavy-duty Sentry safe
23 and actually I think some of the photograph -- I
24 reported to the Sheriff in Jasper County. And they
25 took photographs of that. I thought I saw a photograph

1 here, I guess not.

2 All that the divorce court -- we tried to get the
3 divorce judge to listen to from the beginning but he
4 said specifically, okay, Judge Robert Armstrong, take
5 that to the Court of Common Pleas because that is a
6 case ---

7 MR. SCOVILLE: Your Honor, I'm going to object ---

8 MR. SUN: Excuse me, sir --

9 MR. SCOVILLE: I just want to state my objection
10 to anything being presented that's outside the
11 pleadings and what the Court has taken judicial notice
12 of.

13 MR. SUN: Um, I lost my thought now. Um, It
14 involves the other defendants, Your Honor and the
15 divorce court would not entertain any issue except the
16 divorce and that's very clear in my response, Your
17 Honor.

18 In my response, Your Honor, the Family Court of
19 South Carolina has limited jurisdiction and that's why
20 the South Carolina code of law, 63-3-10, can only
21 entertain divorce and family matters of child custody,
22 child support and so forth. And all those issues,
23 including jurisdiction, is outlined in Section 63-3-
24 530. Nothing I address in this complaint falls into
25 the category that the family court has jurisdiction.

1 Not liable and slander. Not false arrest or malicious
2 prosecution. And certainly not fraud. How they
3 achieved the, the, the, the, the seventy-five thousand
4 dollars.

5 And the attorney fees, by the way, I was not --
6 counsel was referring to attorney fee in the divorce
7 case. I'm referring to attorney fee in all of my
8 criminal charges which I have been acquitted for quite
9 a few already. But then some still coming. Those are
10 attorney fee I'm talking about. And also, too, my jail
11 time, too. I shouldn't be in jail. I hadn't done
12 anything. They put me in jail with lies and I'm going
13 to prove that they are lies -- that they can somehow
14 get money from my mother and cause her to be such
15 distress she fell and went in a coma in the hospital.
16 And now she's dead.

17 And they stole in my safe after they busted my
18 safe with a sledge hammer. And that was done by the
19 lady paralegal. She's not here today. I think she's
20 hiding. They took all my checkbooks. All the warranty
21 deed and car titles. The car that I'm driving, because
22 I'm so busy, I had to go to the DMV to get new title I
23 guess. I've reported it stolen. They have title to my
24 -- the car I'm driving right now. They still have a
25 lot of my stuff. They claim they don't have none.

1 They broke the safe and then also, too, the legal
2 assistant -- after the deputy in Jasper County called
3 them -- she admitted -- she admitted this -- my
4 property, ya know.

5 THE COURT: Sir, let me ask you this. I saw that
6 Mr. Tootle ended up being your attorney in your
7 divorce; is that correct?

8 MR. SUN: No, only the divorce case.

9 THE COURT: That's what I asked you. In your
10 divorce case; correct?

11 MR. SUN: Yes.

12 THE COURT: Did you not speak with him about
13 representing you in a civil case?

14 MR. SUN: Yes, but he asked for too much money.
15 I'm nothing. I'm still looking for attorney, Your
16 Honor. I'm still trying to look for attorney.

17 THE COURT: Okay. All right. Thank you, ya'll.
18 Mr. Scoville, will you forward me a proposed order.
19 Mr. Sun, I'm going to give these back to you ---

20 MR. SUN: Do I understand -- I have hearing
21 problem ---

22 THE COURT: Sir, I am taking it under advisement
23 and I have asked Mr. Scoville to forward me a proposed
24 order. If you would also like to forward me a proposed
25 order you are welcome to do that as well. Just send it

1 to my law clerk.

2 MR. SUN: I sorry, I couldn't hear.

3 THE COURT: That's okay.

4 (Whereupon hearing ended at 1:46 P.M.)

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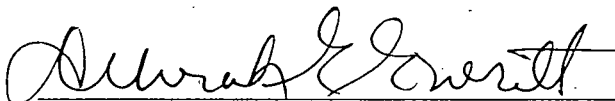
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I, the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Beaufort County, South Carolina, on the 19th day of October, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 24, 2012



Deborah E. Everett
Official Court Reporter

 ORIGINAL

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
3) CASE NO. 2011-CP-07-2546
4 JOSEPH C. SUN,)
5 Plaintiff,)
6 -vs) HEARING
7 OLESYA MATYUSHEVSKY,) MOTION FOR CONTINUANCE
8 CITIZENS OPPOSED TO)
9 DOMESTIC ABUSE,) MOTION FOR SUMMARY JUDGEMENT
10 CHRISTINE VARG and)
11 LILING SUN,)
12 Defendants,)
13)
14)
15)
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ORIGINAL

13 Given before The Honorable Marvin H. Dukes, III in
14 the Beaufort County Courthouse, 102 Ribaut Road,
15 Beaufort, South Carolina on Thursday, July 12, 2012
16 commencing at 9:00 o'clock a.m.
17
18
19
20

21 RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
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A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff : Joseph C. Sun
Pro Se 18 Sixth Avenue
Bluffton, SC 29910
(843) 227-0963
jossunn1095@yahoo.com

For the Defendant : Carlock, Copeland & Stair
By: Jackson H. Daniel
40 Calhoun Street
Suite 400
Charleston, SC 29401
(843) 727-0307
jdaniel@carlockcopeland.com

For the Defendant : Womble, Carlyle,
Sandridge & Rice
By: Charles J. Baker, III
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 720-4619
cbaker@wcsr.com

INDEX TO EXHIBITS

Plaintiff's Exhibits marked for identification:

- 1. Three Separate Letters Showing Dates:
November 28, 2011 (1pg)
December 8, 2011 (1pg)
May 25, 2012 (1pg)

6.

(EXHIBITS RETAINED BY CLERK OF COURT)

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1 THE COURT: Good morning, we are here in
2 Joseph Sun v. Matyushevsky, et al. This is
3 Case 11-CP-07-2546. This is a Motion for
4 Summary Judgement by Defendant Varg. Happy
5 to hear from you.

6 MR. BAKER: Thank you, Your Honor.

7 MR. SUN: I'm sorry --

8 THE COURT: Go ahead.

9 MR. SUN: -- because I had a Motion to
10 Continue, for a continuance on this case
11 which we were trying to meet through a
12 conference call last night at 3:00 o'clock.

13 MR. BAKER: He did file a motion on that
14 on the 25th of June for a continuance, Your
15 Honor. And what I was going to ask you
16 yesterday if we talked on the conference call
17 was to have this Hearing anyway, because I
18 think you can only really decide the
19 Continuance Motion if you hear what the
20 Summary Judgement is and put it in context of
21 what the issues are now because you have
22 issued prior rulings here. In order to
23 decide whether or not he needs discovery
24 before the Summary Judgement Hearing you kind
25 of need to know what the issues are.

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1 THE COURT: All right. Well, why don't
2 we just put it all on the record and I'll try
3 to figure it out. So, I tell you what then
4 probably then from an organizational
5 standpoint, Mr. Sun I'm happy to hear
6 whatever you would like to tell me and put on
7 the record with regard to your Motion for
8 Continuance.

9 MR. SUN: Could I ask Your Honor to see
10 that the record is in front of the Court this
11 morning for my Motion for Continuance.

12 THE COURT: Yes, I have before me a copy
13 that Mr. Sun has given me of a Motion of
14 Continuance dated, or filed rather, June 25,
15 2012.

16 MR. SUN: Uh huh. Okay.

17 THE COURT: Again, the Caption I
18 previously read and Caption Motion for
19 Continuance now. The one that I have I don't
20 know if it is complete as far as the number
21 of pages because it ends at page one and the
22 second page is a Jasper County Sheriff's
23 Office Summary, in fact that's the balance of
24 it. So, if you have the other pages of this
25 Motion for Continuance other than page one --

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1 MR. SUN: Well see they want -- they
2 like for me to file them unstapled.

3 MR. BAKER: I've got it Your Honor, it's
4 just page two.

5 THE COURT: Oh, just page two?

6 MR. BAKER: It's a half a page.

7 MR. SUN: Because they want to do it
8 that way so.

9 THE COURT: All right well, why don't we
10 do that then. I now then have in my
11 possession, I believe the whole thing. So,
12 Mr. Sun, I'm happy to hear from you why you
13 believe a continuance is warranted to this
14 Motion for Summary Judgement.

15 MR. SUN: Mainly because, Your Honor,
16 this, these exhibits to the Motion for
17 Continuance, these are copies. I don't have
18 any copies for counsel but they know about it
19 anyway, these are letters.

20 MR. BAKER: Well, if what they are are
21 the two letters plus the police report,
22 they're attached to what I handed you.

23 MR. SUN: Yes.

24 THE COURT: All right. So, and what
25 I've been handed is a letter to Mr. Baker

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1 from Mr. Sun with a copy to Mr. Scoville. I
2 don't see a date on it.

3 MR. SUN: The date, I think, is on the
4 top.

5 THE COURT: The date is November 28,
6 2011 indicating a desire to do depositions.
7 Also a letter dated December 8, 2011 from Mr.
8 Baker to Mr. Sun, Mr. Scoville copied.
9 Additionally, a letter from Mr. Sun to Mr.
10 Baker dated May 25, 2012 copy to Mr.
11 Scoville. These are the three letters, and
12 as I understand it they are actually already
13 a part of the Motion that's been filed; is
14 that correct?

15 MR. SUN: They are mentioned in the
16 Motion, but could you -- could Your Honor go
17 ahead and keep that as part of the record?

18 THE COURT: Absolutely. Why don't we
19 make them collectively Plaintiff's Exhibit
20 One for the purposes of this Motion.

21 (Plaintiff's Exhibit No. One was marked for
22 identification.)

23 MR. SUN: Those exhibit letters show
24 that I have been contacting the counsels for
25 pretrial discovery ever since the end of last

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1 year up until today. I need to do deposition
2 because they claim that they have not been in
3 my house and they have not stolen anything
4 from me, from my house, or helped to steal
5 anything from my house, but there are many
6 other ways that you can help or coach or aid
7 and abet the crime and that requires
8 discovery. And actually the only way to
9 actually effectively get any information from
10 them truthfully or actually and meaningfully
11 is through deposition, because interrogatory
12 or admission they got too much time to think
13 about how to -- how to respond. And exactly
14 how those affidavits that they attached with
15 the Motion for Summary -- no, not Motion for
16 Summary Judgement -- oh, yes, that's right
17 it's Motion for Summary Judgement -- it's
18 really disturbing. Because like the
19 affidavit of Liling Sun, I have been married
20 to this woman for ten years and my divorce
21 counsel, James Berl has taken her deposition,
22 or is still taking anyway, because she has
23 always beating around the bush and will not
24 give straight answers. So, therefore after
25 four hours he didn't get a whole lot of

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1 information, so we are going to have another
2 one, a continuing deposition later on this
3 month. She can not speak or write much
4 English. This affidavit of Liling Sun was
5 prepared by counsel, I don't know which
6 counsel, and she just signed it; okay? The
7 information inside there whether truthful or
8 not, nobody knows, but I know it's false. In
9 the deposition, which I don't know if this is
10 the deposition for -- in the divorce case,
11 not divorce case, custody case in the Family
12 Court. Liling Sun has shown to not even
13 understand the word "strike". She claimed I
14 had corporal punishment on my daughter, of
15 course, that's a lie. And when my counselor
16 asked her, "have you ever seen your husband
17 strike your daughter? What is the meaning of
18 strike?" And then she would also ask the --
19 and many times in the deposition she could
20 not understand the questions: "Where do you
21 work", you know? "Have you always worked at
22 the same place", and "how do you sign paper?"
23 And so forth, and then he would ask about
24 housekeeping, "do you do housekeeping? What
25 is housekeeping, what does that mean?" In

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1 other words this affidavit of Liling Sun, I
2 need to ask, I need to take the deposition of
3 Liling Sun to find out does she know the
4 meaning of what she signed. I don't think
5 she even knows what it -- what it says. And
6 then, of course, the affidavit of Christine
7 Varg, she said, "I did not go with Liling on
8 September 16th" so she very skillfully said
9 that it was September 16th. I was in jail at
10 that time on domestic contempt at the time.
11 I had no idea when they were broke in my
12 house, actually. So, then go on Sunday 16th,
13 what about all the other dates? And then she
14 said, "well, in fact I have never been on the
15 property or inside the house located there".
16 Okay, you don't have to be on the property
17 but you can be on lookout. You can be on the
18 cell phone with somebody in there and lookout
19 for him and see if anybody coming, police
20 coming or not, be an accessory to the theft
21 or the break-in. I mean there's so many
22 things that they could do. And also too, I
23 want to show the -- or look at the police
24 report. The way that the safe, it's a heavy
25 Century Safe, and also it was broken into

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1 pieces. That's not what my wife or a woman
2 is cable of doing. And she wouldn't know
3 where to find the help or what. And mostly,
4 especially too, on Liling Sun's affidavit she
5 said, "before signing the property settlement
6 I went to Joe Sun's house and removed some of
7 my personal items, including various papers".
8 I need to take deposition to what personal
9 items she has taken. There is no -- she had
10 no personal items there. That's not her
11 home. She never lived there. The house is
12 not even livable. I lived there because I
13 was homeless at the time, because I got
14 kicked out of my marital home. I'm back in
15 there now, because my wife, it's a separate
16 case, but she forged the warranty deed on the
17 Bluffton house and got in there somehow with
18 her counsel Matyushevsky, brought in the
19 February Hearing, where I was served the day
20 before the Hearing, that's why I went there
21 without counsel without any evidence, empty
22 handed. But --

23 THE COURT: I'm listening. Go ahead.

24 MR. SUN: In other words, there's so
25 many things that falls unknown in this, both

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1 of the affidavits. And you can not just rely
2 on the two affidavits that has totally, you
3 know, deprived me of any discovery. I have
4 the right to pretrial discovery first of all,
5 and of course, I have not sighted any
6 authority in my Motion for Continuance, but
7 there are many cases. Everybody here already
8 knows well, you know, Supreme Court and High
9 Court has ruled that Summary Judgement must
10 not be granted until the opposing party has
11 the full and fair opportunity to complete
12 discovery. This is a case of Baughman v.
13 American Telephone & Telegraph Company, 306
14 S.C. 101. Many, many cases; okay? And of
15 course, in the case of -- well, I don't want
16 to go into Summary Judgement at this point, I
17 just want to go into my Motion for
18 Continuance. Because record has shown that I
19 have been trying to make this pretrial
20 discovery by deposition and counsel had
21 written me saying that we should delay it
22 until the ruling of those motions was
23 disposed of, was dismissed, which partially
24 was granted by the Court. And so I resume
25 pretrial discovery, but then all of a sudden

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1 they filed a Motion for Summary Judgment,
2 say no, no more discovery. Well, they agreed
3 to let me have discovery after the -- those
4 motions are disposed of, and now they change
5 their mind and say no, and I have nothing
6 right now. I have not made any pretrial
7 discovery. And they're asking for Summary
8 Judgment without allowing me to have pretrial
9 discovery, and that is my basis of
10 continuance, is to complete discovery.

11 THE COURT: What would you expect to
12 find in discovery that would change whatever
13 we have on the record?

14 MR. SUN: To conflict both of those
15 affidavits and also to show that they are
16 guilty of -- well, I wouldn't say they
17 really, because right now the only one left
18 is Christine Varg, but still you know if it
19 shows other defendants are guilty so let it
20 be that Christine Varg is guilty of
21 involvement either by conspiracy, coaching,
22 aiding and abetting, cover-up, accessory
23 after the fact. You know there's so many
24 other ways you can help to commit a crime or
25 do wrongful things, that's what I expect to

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1 do in the discovery. And right now,
2 Christine Varg deny by saying that, well, "I
3 did not go with Liling on September 16th to
4 real property located at 43 Broadview Drive".
5 Okay, she was not there on September 16th, so
6 what about all the other days, because I know
7 for a fact that that house was broken into
8 more than twice, and I have never been on the
9 property or inside the house. But as I just
10 said earlier, there are many other ways you
11 can help to commit a crime without being
12 inside the house, whether he knew ahead of
13 time that Liling was going to the property or
14 not, that is a playing of words. She didn't
15 know ahead of time but she knew afterward,
16 but then she didn't say anything that's a
17 crime, when you knew about a wrongful act
18 committed, because they might or you can
19 claim that that's marital property or
20 whatever, you know, but if you have lawful
21 right to the property you don't have to climb
22 in, bust my window through the rear window
23 and destroy everything, go in there and then
24 tear up my safe to get to something that you
25 lawfully are entitled to. Why don't they

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1 just do the right way? Why don't they just
2 do it through the law? Family Court will be
3 more that happy to issue a court order and
4 say that yes, Liling get the sheriff to
5 escort you to go in the house and get
6 whatever is yours, you think is yours.
7 That's the way to do it, not to tear up all
8 my things. I have a plenty of damages, a lot
9 of damages, and the damage is not the divorce
10 court has jurisdiction to deal with. The
11 damage caused by Liling and Christine Varg
12 has to be dealt with in this Court. And of
13 course, I've -- there is a --

14 THE COURT: Just out of curiosity, Mr.
15 Sun, I've looked through the complaint and
16 the file, what is it exactly that you assert
17 was stolen? What is the damage?

18 MR. SUN: Some of that has already been
19 -- some of that has already been in the
20 police report. If you look at the police
21 report, I think the first page of the police
22 report and it's not complete. The more
23 complete one is later on, but if you want I
24 have it somewhere, but do you see it? The
25 first page of the police report, do you see

1 it?

2 THE COURT: There we go, keys, this
3 thing?

4 MR. SUN: Uh huh.

5 THE COURT: All right.

6 MR. SUN: But there's more, but I --

7 MR. BAKER: As I read the police report,
8 Your Honor, it was the papers that were in
9 the safe and otherwise some keys and jewelry
10 and stuff and the hard drive of a computer.

11 THE COURT: Yes. I guess the actual
12 tangible, of course, deeds to houses, I mean
13 those are replaceable it's not stealing the
14 house, obviously. I was just curious what
15 the amount in controversy was here.

16 MR. SUN: Oh, it's in the thousands.

17 MR. BAKER: Then he alleges some damage
18 to the house.

19 MR. SUN: Yes, there were damage to
20 safe, the safe was destroyed in the house.

21 THE COURT: Well, on the house you
22 assert was a \$100.00.

23 MR. SUN: No. I don't think that's what
24 it says.

25 THE COURT: Well, that's what the police

1 report that you attached says.

2 MR. SUN: Okay that's what the police
3 report said, but I don't know if --

4 THE COURT: I've seen those little safes
5 and they're what, \$100.00, several hundred
6 dollars? I don't know what kind that one
7 was, but not that it's --

8 MR. SUN: Well, the safe was \$200.00,
9 you know, I mean just the safe itself and of
10 course you know this is damage.

11 THE COURT: Right. I mean I guess based
12 on the valuations that I'm looking at here I
13 was curious whether or not this reached the
14 Circuit Court level. I don't know if that's
15 even an issue, but I guess if --

16 MR. SUN: But that's, Your Honor, may I
17 say something?

18 THE COURT: Sure, go ahead.

19 MR. SUN: At this time we are dealing
20 with Motion of Continuance, not really
21 assessing the damage.

22 THE COURT: No, I know.

23 MR. SUN: Therefore we don't really
24 worry about how much the damage is, really.

25 THE COURT: Well, I know. I just try to

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1 keep an overall view of any case I'm
2 listening to, but do you have anything else
3 you wanted to tell me on the continuance
4 issue?

5 MR. SUN: Well, it's basically I need
6 the discovery to conflict or discredit or
7 even show that genuine issue of material
8 facts still exist in this case against
9 Christine Varg.

10 THE COURT: All right. Anything else
11 then?

12 MR. SUN: No.

13 THE COURT: All right. Happy to hear
14 from you on the continuance issue and then
15 you can feel free to launch right into the
16 Summary Judgement.

17 MR. BAKER: Thank you, sir. I think you
18 hit the nail on the head, and partially Mr.
19 Sun did too. But the nail on the head is
20 what is the likelihood that further discovery
21 would lead to any relevant evidence on the
22 issue at hand before the Court in the Summary
23 Judgement Motion? And Mr. Sun was correct
24 that generally the Baughman case and other
25 cases say that parties should have a chance

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1 to do pretrial discovery before Summary
2 Judgement. But the Dawkins v. Fields case
3 from the Supreme Court in 2003 sighting
4 Baughman recognizes that rule -- and I'll
5 hand that up in just a minute to both you and
6 Mr. Sun -- but that case also says none the
7 less the nonmoving party, in this case Mr.
8 Sun, must demonstrate the likelihood that
9 further discovery will uncover additional
10 relevant evidence and that the party is not
11 merely engaged in a fishing expedition. In
12 that case the Court, after basically no
13 discovery, the Trial Court issued Summary
14 Judgement and the Supreme Court upheld it.

15 And to understand what the material
16 facts are in this case I've got to review the
17 history of Your Honor's prior ruling.
18 Basically what Mr. Sun is saying is that he
19 wants to take the depositions of the two
20 affiant's, Liling Sun and my client Christine
21 Varg and cross-examine them because he may
22 have some type of Perry Mason like moment
23 where they recant their testimony, which
24 they've already given in sworn form. If Your
25 Honor will remember on March 13, 2002 we had

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1 a Hearing on the Motions to Dismiss of Ms.
2 Matyushevsky, who is a lawyer with CODA,
3 CODA, and Ms. Varg. Your Honor, at that time
4 dismissed all claims against Ms. Matyushevsky
5 and CODA, dismissed all but one claim against
6 Ms. Varg because you concluded, and we
7 believe rightly so, that legal advice to Mrs.
8 Sun in the divorce case that she was having
9 with the Plaintiff here was not subject to a
10 lawsuit by him. That apart, that a lawyer,
11 and Ms. Matyushevsky was the lawyer, she
12 works for CODA, Ms. Varg, in this case was
13 acting as her paralegal, legal assistant, and
14 that any advice they gave about whether this
15 is marital property or whether she's got a
16 right to enter the house, as he was alleging,
17 any of those type issues you ruled could not
18 give rise to liability on the face of the
19 complaint. You also ruled that the only
20 claim left was a claim solely against Ms.
21 Varg for the allegation that he raised that
22 she broke into, that Mrs. Sun broke into this
23 Knowles Island property sometime in September
24 and in other undetermined times and Ms. Varg
25 was with her and committed those break-ins

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1 with her, that that could give rise on the
2 face of the complaint to liability. Your
3 order was filed April 6, 2012. You give Mr.
4 Sun a chance to Amend the Complaint, to make
5 those allegations more clearly. Your written
6 order came out several weeks after the
7 Hearing. He actually jumped the gun on the
8 written order, and on the basis of your oral
9 ruling at the Hearing on March 26, 2012 filed
10 his Amendment to Complaint, and/or Amended
11 Complaint, which just had the two paragraphs
12 27 and 28 reworded. What he alleges in
13 there, he still continues to allege that Ms.
14 Matyushevsky and Ms. Varg under the guise of
15 CODA conspired with Liling and then with on
16 the false premise that it was marital
17 property their advice, that Liling and Varg
18 broke into the house. The only issue as we
19 see it in the case left after Court's prior
20 ruling, and Mrs. Sun was dismissed if you
21 remember before our Hearing by Judge Mullen
22 several months ago, only issue left in this
23 case that would be for trial, and by the way
24 we are on the roster, but far down the trial
25 roster for next week, but the only issue,

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1 triable issue left, the only claim is whether
2 or not Ms. Varg committed the break-in with
3 Liling Sun, and the issue is not whether she
4 was part of giving of legal advice that she
5 had the right to go break-in. And Mr. Sun is
6 correct, before the Motion to Dismiss was
7 heard, we told him that we were not going to
8 voluntarily engage in any discovery and he
9 backed off on his request to take deposition
10 at the time. After Your Honor's ruling, we
11 never agreed to take discovery, we never
12 prevented him from doing it. He wrote a
13 letter saying he wanted to take depositions,
14 we'd filed the Motion for Summary Judgement,
15 and quite frankly I knew the Hearing was
16 coming up and if he had noticed the
17 deposition, which he did not, we would have
18 objected to it because the issue is so
19 narrow, and that issue is taken care of in
20 the affidavits, Liling admits, and to get to
21 the dates Mr. Sun alleges in the Amended
22 Complaint that in about September 2010, and
23 at least one more time afterwards that Ms.
24 Varg and Liling broke into the Knowles Island
25 house. We can't prove in negative what

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1 Liling has said, she has admitted that she
2 did go into the house on or about September
3 16th. The police report he submitted with
4 his Motion of Continuance shows that he
5 reported the break-in on September 18th, so
6 on or about September 16th was the break-in.
7 And Mrs. Sun has testified under oath in her
8 affidavit that Ms. Varg was not with her
9 then. Ms. Varg says she was not with her
10 then and has never been to the property, much
11 less inside the house and so, I don't know
12 what there is left. The basis for
13 continuance is that he wants to go into a
14 wide ranging cross-examination to show, as he
15 put it in his argument just now -- let me
16 find my notes -- that there are many other
17 ways that you can help, or coach, or aid and
18 abet. He wants to show Ms. Varg is guilty of
19 involvement either by coaching, conspiracy,
20 or cover-up, but that gets back to what Your
21 Honor has already ruled on in the Motion to
22 Dismiss. The sole claim left is that she
23 committed the break-in with Mrs. Sun and we
24 think the affidavits take care of that and
25 there's really no other evidence, no other

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1 discovery that he's suggested besides
2 cross-examination of them and breaking them
3 down to recant their affidavits that he has
4 suggested would lead, he wasn't there, he
5 can't testify. So we don't feel that a
6 continuance would meet the standard under
7 Dawkins, that he has shown that it's
8 reasonably likely that further discovery
9 would uncover additional relevant evidence.
10 The genuine issue of material fact he put it
11 is there is none. The only material fact is
12 did Ms. Varg accompany her or not at any time
13 to break-in to that house. The affidavits
14 take care of that and the other facts are
15 simply not material. Whether or not she
16 engaged with Ms. Matyushevsky in advising her
17 that she could go to the house, she said she
18 didn't know she was going there ahead of
19 time. So, Your Honor, we don't feel like
20 that these ladies should be subjected to
21 depositions. That it's pretty clear based on
22 the narrowness of the issue before the Court,
23 that the Summary Judgment should be granted.
24 And I might mention that the, which I gave
25 you my copy of the Motion for Continuance,

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1 but the police report that he attaches is
2 perfectly consistent with Ms. Varg's and Mrs.
3 Sun's testimony, which is that he reported to
4 the police, I guess it was the Jasper County
5 Police, that someone had broken into the
6 house. He suspected his wife, he didn't know
7 who else. He didn't name Ms. Varg to the
8 sheriff's deputy. That the sheriff's deputy
9 called Liling Sun and she said, she denied it
10 at first, but she said I will have my lawyer
11 call you. That, that day, according to
12 police report, Ms. Varg, which was a
13 Saturday, September 18, 2010 was a Saturday,
14 I looked back at my calendar yesterday, and
15 that Ms. Varg fielded the call from Liling
16 Sun and responded to the deputy and
17 truthfully told him what Liling had told her,
18 which was that Liling had been at the house,
19 not that she, Christine Varg, had been at the
20 house because she hadn't been there. She
21 didn't know about it until Liling called her
22 that day, and that's what Ms. Varg told the
23 policeman, that Liling had been there and
24 taken some papers, some legal papers. So you
25 know to say that that's evidence that the

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1 affidavits are untrue is just not correct.
2 The police report, what he's tried to show as
3 grounds for a continuance is perfectly
4 consistent with the affidavit, so it's our
5 position there's no need to cross examine
6 them. And Rule 56 recognizes that sworn
7 affidavits are a proper basis for Summary
8 Judgement in the right case. And as Dawkins
9 says in unusual circumstances like this where
10 the issue is so narrow and it's really one
11 issue of material fact, and there's no
12 dispute as to that and there can be none.
13 And I don't see how whatever discovery he
14 undertakes is going to show any differently
15 than how these ladies have sworn that Varg
16 was not there on that date. Thank you.

17 THE COURT: So, no depositions were
18 noticed under the rules; is that correct?

19 MR. BAKER: That's correct. He did
20 write me saying he intended to do so, but he
21 has not noticed them yet.

22 THE COURT: I note, I believe this is
23 correct, this case is now a year old.

24 MR. BAKER: As I said, we got a notice a
25 couple of weeks ago that it's on the Jury

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1 Trial Roster for next week. I think it's
2 number 19.

3 THE COURT: Okay.

4 MR. BAKER: I don't, you know, who knows
5 if it will get reached or not.

6 MR. SUN: Could I -- would I-- can I?

7 THE COURT: Oh, absolutely. Go ahead,
8 Mr. Sun, I'm happy to hear from you.

9 MR. SUN: Of course the Jury Trial
10 Roster and all that was done I think through
11 your system, the court system you know
12 automatically without considering the fact
13 that there were Motions, Dismiss and Summary
14 Judgement, and so forth that would push them
15 backwards, further down the line. Also there
16 was still cases on appeal right now which
17 could, you know, change the whole thing.

18 MR. BAKER: I think, Your Honor, you
19 know, if Your Honor rules that Summary
20 Judgment Motion is premature he's entitled to
21 conduct additional discovery, well, we're not
22 going to consent to a continuance. It would
23 be hard for me to get up before the Circuit
24 Judge and say, you know, because he has not
25 conducted any discovery yet, but the point is

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1 that there's no reason for any further
2 discovery given the narrowness of the issues
3 left.

4 MR. SUN: All right.

5 MR. BAKER: If he'd address that?

6 MR. SUN: Well, that's right, but I mean
7 that's something that's --

8 MR. BAKER: I'm just noting that --

9 MR. SUN: -- nothing to do with my
10 Motion for Continuance.

11 MR. BAKER: Well, I'm just noting for
12 the Court --

13 MR. SUN: Right. Okay.

14 MR. BAKER: -- that we do have to go see
15 the Circuit Judge if the case isn't
16 concluded.

17 MR. SUN: Anyway, as far as the
18 affidavit and the counselor's conclusion and
19 he has no right to conclude it for me,
20 because he is trying the case for me saying
21 that discovery would not find out anything.
22 That's as far as he's concerned of course
23 that's what he believes, or maybe that's what
24 he wants to say, but I am the one who is
25 trying or conducting my part of the

1 litigation right now. And discovery will
2 find out a lot of things mainly because as I
3 said without discovery all the false and
4 incomplete information in the two, both
5 affidavits will become the truth, because I
6 said something about OJ Simpson, or whom has
7 still maintained his innocence, if you take
8 anybody's sworn statement and just go ahead
9 without any kind of cross-examination and
10 take that as truth, then we don't need the
11 Court, you know. This -- those affidavits is
12 just the beginning of what their allegation
13 or what their testimony is. And then go from
14 there and we will start finding out that what
15 he said, he or she said, is not true or is
16 incomplete and there's a lot more to it.
17 We're going to cover all that up without
18 discovery, or cross-examination, basically.
19 Now, as to the police report, I mentioned
20 that in my affidavit. In that police report
21 on the first day when the deputy called
22 Christine Varg, she said that she knew -- I
23 am going to read that police report verbatim.
24 Christine Varg, she knew, she already knew
25 everything about the documents that was

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1 stolen from my safe. I could not remember
2 everything in my safe because the whole safe,
3 it's a big safe as you can see, Your Honor.
4 It's packed, it's full with documents a lot,
5 jewelry, cash, my savings bonds, too. I have
6 a lot of saving bonds. It's in the police
7 report -- somehow I cannot get my hands on it
8 now.

9 THE COURT: Well, let me ask you this
10 while you're looking for that, Mr. Sun, what
11 official discovery did you conduct in this
12 case during the past year that this case has
13 been ongoing?

14 MR. SUN: Zero. Mainly because there
15 was one motion after another. There was one
16 Motion for to Dismiss by Liling Sun, and then
17 of course during the motion, as far as the
18 motion, you know, discovery was stopped. And
19 so, and then there was an another Motion to
20 Dismiss by the other defendants in front of
21 this Court. And then after that I was
22 allowed to Amend the Complaint and that took
23 30 days for that. And then after that I just
24 pick up the letter, you saw those letters
25 that I asked for deposition and then they

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1 filed a Motion for Summary Judgement. I know
2 it has been a year, but also too, it's been a
3 lot of things in between. Those motions, two
4 Motions to Dismiss and one Motion for Summary
5 Judgement, each one of them took several
6 months because each time you file something
7 it takes two or three months.

8 THE COURT: But even as we sit here
9 today you haven't noticed under the rules,
10 the depositions that you now want to do; is
11 that correct?

12 MR. SUN: Well, I -- I, in that letter,
13 I told them my schedule because I tried to
14 give them the courtesy, you know, that they
15 could respond and see what day they would
16 like too, because I don't know what to, you
17 know, to me it's best to do it on the
18 weekend, because I mean, you know, I'm sure
19 they don't want to do that, so and that sort
20 of thing, but I haven't heard from them.
21 Okay, so I said in my letter, I said, "if I
22 don't hear from you I'm going to choose a
23 date and time" but just because of that, it's
24 not -- what do they call it -- intentional
25 delay. I mean you know it's -- it's pretty

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1 much on a schedule because in that letter I
2 said -- that's the only copy of the letter I
3 have for Your Honor, you know, but --

4 THE COURT: Well, that's all right, but
5 I mean --

6 MR. SUN: -- I told them that by the --
7 by the -- in the beginning of July, I will go
8 ahead and schedule, if I don't hear from you
9 by the end of the 30th, June the 30th --
10 that's the last letter, I think, I believe
11 that's the first one was about last year. I
12 said if I don't hear from you, and they
13 haven't responded. If they don't want to do
14 that they could have you know at least like
15 the first time, they responded and say that
16 you know --

17 THE COURT: Well, I mean I see the
18 letter, you are referring as in Plaintiff's
19 Exhibit One, which is comprised of several
20 letters, the May 25, 2012 letter.

21 MR. SUN: I gave --

22 MR. BAKER: Your Honor, I will tell you
23 that I did not receive -- that letter was
24 postmarked and I don't think it's in my file
25 it must be back at the office -- the letter

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1 was postmarked, the May 25th letter was
2 postmarked June 20th and for whatever reason
3 I don't know, I didn't get it in my office
4 until I believe it was July 1.

5 THE COURT: Well, this is actually a
6 2012 letter is the one I'm looking at.

7 MR. BAKER: That's the letter I'm
8 talking about, his most recent letter.

9 THE COURT: Well, today is July 12th,
10 but I mean the fact is I guess what I was
11 trying to make sure of, because I think I
12 understand this having looked through the
13 file and listened to arguments, your concern
14 here today Mr. Sun is that discovery hasn't
15 been conducted?

16 MR. SUN: Right.

17 THE COURT: But you haven't requested
18 any discovery, you haven't sent any
19 interrogatories, or a request to produce, or
20 request to admit, you haven't noticed any
21 depositions as of today?

22 MR. SUN: I -- I gave a schedule when I
23 would notice them, without they -- if they
24 refuse, to respond. I was hoping they would
25 respond to give me a date that they prefer,

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1 and then I would go ahead and because it cost
2 me. Because I have to prepay the court
3 reporter, so I don't want to prepay the court
4 reporter on a day that they cannot make it.
5 Then I will loose, they charge \$95.00 for to
6 appear you know. And because I want to hear
7 a date from them before I prepay \$95.00.
8 Anyway on that letter I say that if I don't
9 hear from them by June the 30th, but today is
10 the 12th, you know I mean I should have but I
11 mean.

12 THE COURT: All right. Do you have
13 anything else you want to tell me on the
14 Summary Judgment?

15 MR. SUN: Well, about the police report,
16 okay. It was right after I made the police
17 report, or called the police about a
18 break-in, or one of the break-ins anyway,
19 Deputy Mayers called Christine Varg, of
20 course she called Liling too, before that,
21 and Christine Varg -- I don't have a copy of
22 that I'm still looking for it, but you have a
23 copy of that -- Christine Varg said that she
24 talked to Liling Sun and they both knew
25 exactly what all the documents, she said that

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1 Liling has all the documents that she stole
2 from my safe, so she knew about all the
3 documents she stole from my safe.

4 MR. BAKER: May I have my copy of the
5 motion back, Your Honor?

6 THE COURT: Oh, I'm sorry.

7 MR. BAKER: No, the Motion for
8 Continuance.

9 THE COURT: The Motion for Continuance?

10 MR. BAKER: Yes, I just need to look at
11 the report you're referring to.

12 THE COURT: All right. Is there
13 anything else, Mr. Sun?

14 MR. SUN: Okay. No. That will be all,
15 but I do object to it because I feel that the
16 discovery would expose a lot of the truth.

17 THE COURT: Anything else from the
18 defendant?

19 MR. BAKER: Just that. I mean the report
20 does say that Ms. Varg was calling to confirm
21 that her client, Mrs. Sun, does have all the
22 documentation. So, I mean she called the
23 police, that's consistent with what the
24 affidavit said, you know, but again, Your
25 Honor, with all due respect, what property

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1 was taken, or whether it was marital or not,
2 whether she had a right to go in there or
3 not, is really not relevant or material to
4 the claim that's left. The claim that's left
5 is whether Ms. Varg did it with her or not.
6 and we don't think any further discovery is
7 warranted on that.

8 MR. SUN: Just to put it on the record,
9 and that is I still continue to object to the
10 fact that the only thing counsel said the
11 only thing left, or the only issue left was
12 whether Christine Varg had been in the house
13 physically aiding and abetting the burglary
14 or the theft, and counsel claimed that
15 everything else, or the other wrongs that she
16 has done, committed, such as coaching, aiding
17 and abetting some other way, like looking out
18 or advising, giving bad advise to break-in or
19 where to find people to help to bust my safe
20 and all that, and also a cover-up later on,
21 all that has been dismissed.

22 THE COURT: As we sit here today do you
23 have any evidence whatsoever of any of that?

24 MR. SUN: Well, without -- first of all,
25 I am not in a position to try the case today

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1 at this Hearing, so but --

2 THE COURT: But it's scheduled for next
3 week; right? It's scheduled, it's on the
4 Jury Roster for next week; is that my
5 understanding?

6 MR. SUN: Right, but I'm sure that you
7 know if the discovery is allowed that would
8 be -- that would be put off I'm sure, you
9 know.

10 THE COURT: But Mr. Sun, my problem with
11 that is this, this case is a year old. As I
12 understand it, you haven't requested any
13 discovery under the rules, you haven't
14 noticed any depositions, haven't sent any
15 interrogatories, no request to produce, no
16 request to admit at all as of today, and this
17 case is now on the short Jury Roster. And
18 essentially what you're asking me to do is
19 hold this case up so that you can now, after
20 a year, conduct some discovery in hopes that
21 you will find some evidence to support your
22 position, which position is contrary to the
23 filed affidavits of Ms. Varg and your former
24 wife. Is that an accurate summary of the
25 situation?

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1 MR. SUN: It is summary, it is accurate
2 the summary of the chronological event in the
3 court file, but there are so many things that
4 made it impossible too. As I said, I just
5 outlined earlier that all these -- there were
6 two Motions to Dismiss and one Motion for
7 Summary Judgement and then the letter. Of
8 course, there's also an appeal, also on the
9 motions, and also the letter from the counsel
10 saying that he would like to wait until the
11 motion is disposed of. And I have just
12 amended the -- amended at the end of March,
13 and you know the amendment was allowed by the
14 Court on Christine Varg. At the end of March
15 I amended it, so after that then they filed
16 another Motion for Summary Judgement, so I --

17 THE COURT: Well, let me do this, is
18 there anything else from anyone then on this
19 issue?

20 MR. BAKER: No, Your Honor.

21 THE COURT: Mr. Sun, anything else?

22 MR. SUN: No.

23 THE COURT: Mr. Sun, I'm going to deny
24 your Motion to Continue for the reasons that
25 we've discussed on the discovery. You know I

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1 certainly understand that anyone always wants
2 to have more information, but after a year
3 when no discovery has been requested under
4 the rules it would be an error for me to
5 continue a Summary Judgement Motion for more
6 discovery when actually none has really been
7 officially requested, so I'm going to deny
8 that motion. With regard to the Summary
9 Judgement Motion, I'm left with the
10 affidavits of the parties which I've reviewed
11 and having reviewed the information that
12 you've put into the Court and that put in by
13 Ms. Varg, I'm going to grant the Summary
14 Judgment Motion on behalf of Ms. Varg. I
15 mean, I understand from your affidavit you
16 have certain suspicions that Ms. Varg may
17 have done something, but mere suspicions I
18 don't even think rise to a scintilla of any
19 sort of factual issue with regard to your
20 allegations. I mean they're nothing more
21 than suspicions backed up by nothing as far
22 as I could tell. And faced with Ms. Varg's
23 affidavit and your former wife's affidavit,
24 and yours that contain your suspicions, I
25 think I've got no choice under the rules but

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1 to grant the defendant's Summary Judgement
2 Motion, which I'm going to ask Ms. Varg's
3 attorney to prepare an order on both the
4 Continuance and the Summary Judgement and
5 with a copy to you. So, I would appreciate
6 it if you would do that for me and again
7 share it please with Mr. Sun, first.

8 MR. BAKER: Thank you, Your Honor.

9 THE COURT: Unless there's anything else
10 for the record, that will conclude the
11 record.

12 (Hearing concluded at 9:50 o'clock a.m.)
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1
2 STATE OF SOUTH CAROLINA)

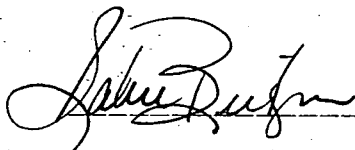
3 : C-E-R-T-I-F-I-C-A-T-E

4 COUNTY OF BEAUFORT)

5 I, Sabre Bridgers, Court Reporter and Notary Public,
6 certify that the aforementioned parties did appear
7 before the Honorable Judge Marvin H. Dukes, III at
8 9:00 o'clock a.m. on Thursday, July 12, 2012, at the
9 Beaufort County Courthouse, Beaufort, South Carolina;
10 that the pages constitute a true and accurate
11 transcript of the testimony given at that time and
12 place.

13 I further certify that I am not of counsel or kin to
14 any of the parties to this cause of action, nor am I
15 interested in any manner in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal this the 7th day of September, 2012.

18
19
20 

21 Sabre Bridgers

22 Notary Public for South Carolina

23 My Commission Expires: February 2, 2020
24
25

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The South Carolina Court of Appeals

Joseph C. Sun, Appellant,

v.

Olesya Matyushevsky, Citizens Opposed to Domestic Abuse, Christine Varg, and Liling Sun, Respondents.

AND

Joseph C. Sun, Appellant,

v.

Olesya Matyushevsky, Citizens Opposed to Domestic Abuse, and Christine Varg, Respondents.

AND

Joseph C. Sun, Appellant,

v.

Olesya Matyushevsky, Citizens Opposed to Domestic Abuse, and Christine Varg, Respondents.

Appellate Case No. 2011-204367

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.


J.


J.

Columbia, South Carolina

cc: Joseph C. Sun
John Samuel Verner Scoville, Esquire
Charles J. Baker, III, Esquire
Jackson H. Daniel, III, Esquire
Sarah E. Wetmore, Esquire

FILED

April 29, 2015

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Carmen Mullen, Circuit Judge
Marvin H. Dukes, III, Master-In-Equity**

**APPEAL CASE No. 2011-204367
Circuit Court Case No. 2011-CP-07-02546**

**OLESYA MATYUSHEVSKY, CITIZENS
OPPOSING DOMESTIC ABUSE, CHRISTINE
VARG and LILING SUN Respondents**

v.

JOSEPH C. SUN Appellant

PETITION FOR REHEARING

JOSEPH C. SUN, Appellant pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

J. Sam Scoville, Esq.
P.O. Drawer 1107
Beaufort, SC 29901

Jackson H. Daniel, III, Esq.
40 Calhoun Street, Suite 400
Charleston, SC 29401

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MEMORANDUM IN SUPPORT

Appellant Joseph Sun pursuant to Rule 221(a), SCACR, respectfully requests the court for a rehearing in this appeal case and submits that in affirming the judgment of the circuit court, this court has overlooked the followings:

(1) Appellant is a 67 year old Asian American, retired on Social Security, who has only a small check from the government every month as his only income. He is not a lawyer, does not have the funds to hire one to represent him at the circuit court or this court. He can only do the best he can to prepare and file all necessary legal documents himself.

Appellant has always been a law-abiding family man. In 2010, Appellant had been falsely arrested numerous times by the respondents who lodged fabricated charges against him, and was incarcerated in and out of jail most of that year after which all charges were *nolle prosequi* or acquitted. Appellant's home was burglarized several times admittedly by Respondent LiLing aided and abetted by other respondents and numerous valuables were destroyed, stolen or removed. Appellant was made homeless for 18 months by the respondents' wrongful acts and had to rent apartments for temporary residence. His 90 year old mother could not tolerate the numerous threats and harassments from these respondents who insisted unless they get money from her, they would subpoena her to court from Canada. The old lady had to give them \$75,000, but slipped, fell and died several months later. Appellant had lost practically everything and is now trying to rebuild his life in his retirement. The court may have overlooked that this is not a harassing lawsuit, but a lawsuit in distress. Appellant has no other legal remedy.

(2) All the respondents in this case are represented by big law firms who have been successful in converting Appellant's lawsuit seeking recovery of damages into an action which they claim

involving only issues in the divorce, and convincing the circuit court and this court that jurisdiction rests in the Family Court, when nothing in S.C. Code Ann. § 63-3-530(A) would allow the Family Court jurisdiction to litigate the aforesaid matter. The Beaufort County Family Court had already refused to entertain certain incidents alleged in the complaint during the pendency of the divorce. Respondent Citizens Opposing Domestic Abuse (hereinafter CODA) was supposed to be a non-profit organization helping women who were abused by their spouses therefore might appear to be innocent and that accusations against it or its employees were presumed incredible. Appellant was not allowed to prove that this is a case of exception to the majority of their “noble deeds.”¹ He is only asking for an opportunity to prove.

(3) As cited by the court in its unpublished opinion, pursuant to Rule 220(c), SCACR, the court “may affirm any ruling, order, decision or judgment upon any ground appearing in the Record on appeal.” Those grounds are most likely the insufficiency of the pleadings that are subject to dismissal. The court also cited Rule 12(b)(6), SCRCR (providing a circuit court may dismiss a complaint when the defendant demonstrates the plaintiff’s complaint fails to allege facts sufficient to constitute a cause of action). Appellant admits that his pleadings were not well written at the time, not to a professional standard. Appellant asks the court to heed to the United States Supreme Court’s holding in *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), where “As the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30

¹ There is evidence that in 2011, Respondent Varg had written email to Appellant using phony ID calling Appellant a boll weevil, evidence showing Respondent Matyushesky had told Appellant on the phone when Appellant was pro se in 2009 that she did not want her client to know what she filed when asked about the counterclaim for divorce, and evidence that she intentionally used a wrong Certified receipt at the temporary hearing to coverup the service of notice of temporary hearing was done the day before the hearing. The Certified Mail Receipt of one day prior was disclosed by Counsel Baker in a separate federal case.

L.Ed.2d 652 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*, at 520-521, 92 S.Ct. at 596, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)." Appellant submits that the court overlooked that the complaint or amended complaint in the within circuit court case should not be dismissed, based on the aforesaid doctrine. Appellant has stated several valid claims which could entitle him to relief.

(4) Albeit inartfully done in his complaint, Appellant in summary, alleges that Respondent LiLing after signing a prenuptial agreement and after several years of marriage, pretentiously and fraudulently misrepresented to Appellant and his parents that she would be a good wife and in law, thereby gaining trust and access to Appellant's family private business. The truth was LiLing was already writing and seeing a younger man met on the internet. She then used false pretense of domestic abuse and sought legal assistance at Respondent CODA where respondents Matyushesky and Varg conspired with LiLing, at a Family Court hearing used a warranty deed altered by respondent LiLing and a false Certified Mail Receipt to cause Appellant to be evicted from his mother's house. Though may be insufficient to a professional standard, Appellant alleged in his complaint, Paragraph (7), (R.p.61, line 22) and in his Amended Complaint, Paragraph (6), (R.p.85, line 22) that Respondent LiLing and he signed a prenuptial agreement before marriage. In Paragraph (27), (R.p.68, line 1) of the complaint and Paragraph (28) (R.p.93, line 10) of Amended Complaint, Appellant alleged that the respondents broke in his home in another nearby town, destroyed the Sentry Safe and stole numerous valuables including the original prenuptial agreement. A copy of the Prenuptial was already filed in the Divorce Case No. 2009-DR-07-

00628. Respondent's breach of the prenuptial agreement had caused Appellant to suffer damages on the unnecessary rents and expenses he had to pay for rooms and apartment for the next 18 months. In its affirmance, this court overlooked that the Family court had no jurisdiction to determine damages and injury suffered by the Appellant, and that Respondent presented "Judicial Notice" at the hearing which supported Appellant's allegations of her break in and theft.

(5) As alleged in aforesaid Paragraphs (27) and (28), of his complaint (R.p.68&93), the respondents allegedly conspired to break in Appellant's home (separate from the marital) and destroyed his safe and stole all the valuables, again in breach of the prenuptial agreement. Because some, but not all, wrongful acts committed by the respondents occurred during the pendency of the divorce, both the circuit court and this court overlooked the issue of breach of prenuptial agreement and ruled that "the family court has exclusive jurisdiction to hear and determine actions for settlement of all legal and equitable rights of the parties in the action." citing *Appeal of Sexton*, 298 S.C. 359, 360, 380 S.E.2d 832,833 (1989). This court has overlooked that the cited case is irrelevant and inapplicable in the within appeal as Appellant is not seeking the determination of "whether the Family Court has subject matter jurisdiction to equitably apportion property owned by a third party" which was the issue on the cited case. Appellant was only suing for damages and injury on which Family Court had no subject matter jurisdiction. Appellant cited *Thompson v. Ballentine*, 298 S.C. 289, 379 S.E.2d 896 (1989) on Page 15 of his Amended Final Brief and Page 3 of his Amended Reply Brief where the South Carolina Supreme Court held that "The family court are courts of limited jurisdiction, as provided by S.C. Code Ann. § 20-7-420 (1976), ... nor did it have jurisdiction to award damages." In its opinion, this court overlooked that authority.

(6) Furthermore, the court overlooked Appellant's citation of *Bailey v. Bailey*, 330 S.C. 326,

498 S.E.2d 891 (1998) on Page 15 of his Amended Final Brief where this court previously held that “property excluded from the marital estate by written contract or antenuptial agreement of the parties is considered non-marital property over which the family court has no jurisdiction. See S.C.Code Ann. § 20-7-473 (Supp.1997) (“The [family] court does not have jurisdiction or authority to apportion nonmarital property.”); S.C.Code Ann. § 20-7-473(4) (Supp.1997) (Property excluded from the marital estate by written contract of the parties is considered non-marital property).” *Id.* The within case sought to determine that Respondent LiLing had falsely claimed the two houses and numerous valuables she stole from Appellant to be marital during the divorce proceeding causing damages and injury to the Appellant. In its opinion, this court overlooked the issue on the prenuptial agreement on which only the circuit court had jurisdiction to entertain.

(7) Transcript of the hearing (R.p.131) shows Respondent LiLing presented the Sheriff’s Report (R.p.108) as her “evidence outside the pleadings” and her “judicial notice” to the circuit court. Contrary to Respondent’s intention, the judicial notice actually showed evidence that there was an unresolved disputed issue of whether the home she broke in and stole numerous items was in violation of the prenuptial agreement (R.p.102). Only the circuit court, not the family court, had jurisdiction on the determination of that issue. Pro se Appellant may have failed to allege clearly and succinctly to a professional standard that respondents’ conspiracy of and actual break in and theft of his personal non-marital items were in violation of the prenuptial agreement, his allegations are sufficient pursuant to *Estelle v. Gamble*, supra.

(8) The court overlooked that the circuit court in its court order of November 9, 2011 “analysis” (R.p.11, lines 10-12), already found that Appellant “appears to allege fraud, adultery, forgery, wrongful arrest and incarceration, libel and slander, burglary, theft, trespass and

conspiracy.” As Appellant was seeking recovery of damages and injury he had suffered, caused by the respondents’ wrong doings, the circuit court already acknowledged Appellant’s several causes of action showing allegations were sufficient and that circuit court had jurisdiction.² *Thompson v. Ballentine*, supra, Furthermore, as recognized by the circuit court, fraud, libel and slander and conspiracy involved other respondents over whom Family Court had no jurisdiction. The court overlooked that even though Appellant’s complaint shows he might have acquiesced to Respondent LiLing’s forgery of warranty deed after he was misled by LiLing in believing it was harmless, Respondents’ utterance of the forged warranty deed to fraudulently gain possession of the house constituted fraud to a criminal magnitude.

(9) Regarding the dismissal of Respondents Matyushevsky, CODA and Varg from the complaint, the circuit court assumed all acts however malicious and wrongfully committed by these respondents were done “in the performance of their professional activities on behalf of and with the knowledge of their client” therefore, they enjoy immunity pursuant to *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 339 S.E.2d 887 (1986). This court has overlooked that, in *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995) the South Carolina Supreme Court held that, “nothing in Gaar renders an attorney immune for acts taken **outside the scope** of the professional relationship.” The Supreme Court further made reference to a number of “jurisdictions which recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations.” *Stiles*, at 299. The S.C. Supreme Court further held that “Consistent with Gaar and the above cited cases, we find that an attorney may be held liable for conspiracy where, in addition

² In the deposition in a separate custody case, Respondent LiLing also admitted that after destroying Appellant’s safe and stealing numerous items, she gave them to her counsel Matyushesky who kept them up to this date at the office at Respondent CODA

to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client. Accordingly, we hold that the trial court erred in dismissing the complaint on the basis that Gaar provides absolute immunity to an attorney under any and all circumstances.” *Stiles*, at 300. In addition, this court overlooked that there was allegations that Respondent Matyushesky committed numerous libel and slander³, conspired with others to falsely incarcerate Appellant, then to burglarize Appellant’s home in violation of the prenuptial agreement, and to extort money from Appellant’s ailing mother in Canada and much more, all done as her vendetta against Appellant’s accusation and exposure of her wrong doing and bar complaint. Appellant alleges in his complaint and amended complaint that up to this date, all respondents including CODA are still in possession of numerous valuable items they conspired with LiLing to steal from Appellant at the Knowles Island Home and the Bluffton home. The Family Court has no jurisdiction over other respondents or to determine the amount of damages or the whereabouts of the stolen items, only circuit court has that jurisdiction.

(9) In the court’s opinion, it cited *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528-29, 339 S.E.2d 887-89 (1986) where “An attorney is immune from liability to third persons with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in action for malicious prosecution.” The court overlooked that the *Gaar* case gave immunity to attorneys **only** under the conditions of “acting in good faith” and “with the knowledge of his client.” Those are genuine issues of material facts to be determined by the jury. Appellant might have failed to specifically allege that Respondent

³ Calling Appellant a criminal to numerous others based on charges she and her clients fabricated and were all dismissed or acquitted.

Matyushesky acted “outside the scope” of her professional relationship with client LiLing, he alleged several acts of fraud⁴, libel and slander and conspiracy to commit burglary against the Appellant. Even without the specific words, those wrongful acts, some criminal in nature should be construed to be outside of professional conduct, bad faith and malicious per se.

(10) The court overlooked Appellant’s cited case of *Brazell v. Windsor*, 384 S.C. 512, 682 S.E.2d 824 (2009), Page 17 Amended Final Brief, where the South Carolina Supreme Court held that “If the facts and inferences drawn from the facts alleged in the complaint, viewed in light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Gentry v. Yonce*, 337 S.C. 1,5, 522 S.E.2d 137,139 (1999). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in light most favorable to the plaintiff, states any valid claim for relief. *Id.*” In light most favorable to the Appellant, Respondent LiLing had breached the prenuptial agreement, committed fraud, forgery, burglary, theft, trespass and conspiracy against the Appellant as found by the circuit judge who erroneously ruled that only Family had jurisdiction. Further in light most favorable to the Appellant, Respondents LiLing, Matyushesky, Varg and CODA conspired with one another and other individuals and acted in bad faith, some without the client’s knowledge on the numerous malicious wrongful acts against the Appellant causing him damages and injury. The circuit court, not the family, has jurisdiction on Appellant’s complaint.

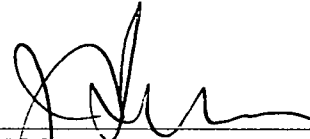
⁴ using a false Certified Mail Receipt, a forged warranty deed and coaching her client to steal the car title, all valuables and Prenuptial Agreement by breaking in Appellant’s home using grinder and sledge hammer pretentiously claiming the items were marital because the Prenuptial was stolen.

CONCLUSION

For the foregoing reasons, Appellant prays the court pursuant to Rule 221(a), SCACR, for a rehearing in this case or a reconsideration of its opinion of March 18, 2015, and for a reversal of the Orders of the Circuit Court on appeal in this case.

Respectfully submitted,

This 27th day of March, 2015.

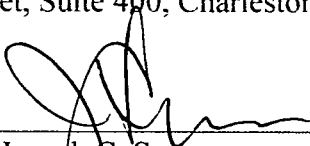


JOSEPH C. SUN, pro se
P.O. Box 151
Bluffton, SC 29910
843-226-8788

PROOF OF SERVICE

I certify that I have this date served the Appellant's Petition for Rehearing on all the Respondents by depositing a copy of same in the U.S. Mail postage prepaid, on March 27, 2015, addressed to their attorneys on record as follows:

J. Sam Scoville, Esq. P.O. Drawer 1107, Beaufort, SC 29901
Jackson H. Daniel, III, Esq. 40 Calhoun Street, Suite 400, Charleston, SC 29401



Joseph C. Sun, pro se
P. O. Box 151
Bluffton, SC 29910
843-226-8788

March 27, 2015
Bluffton, SC 29910

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Joseph C. Sun, Appellant,

v.

Olesya Matyushevsky, Citizens Opposed to Domestic
Abuse, Christine Varg, and Liling Sun, Respondents.

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Abuse, and Christine Varg, Respondents.

Appellate Case No. 2011-204367

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge
Marvin H. Dukes, III, Special Circuit Court Judge

AFFIRMED

Joseph C. Sun, of Bluffton, pro se.

John Samuel Verner Scoville, of Harvey & Battey, P.A.,
of Beaufort, for Respondent Liling Sun.

Charles J. Baker, III, of Womble Carlyle Sandridge &
Rice, LLP, of Charleston; and Sarah E. Wetmore and
Jackson H. Daniel, III, of Carlock Copeland & Stair,
LLP, of Charleston, for Respondents Olesya
Matyushevsky, Christine Varg, and Citizens Opposed to
Domestic Abuse.

PER CURIAM: In this consolidated appeal, Joseph Sun appeals three orders of the circuit court. He argues the circuit court erred by (1) dismissing his claims against Liling Sun; (2) dismissing his claims against Olesya Matyushévsky and Citizens Opposed to Domestic Abuse (CODA), dismissing all but one of his claims against Christine Varg, and denying his motion for leave to amend his complaint; and (3) denying his continuance motion and granting Varg's motion for summary judgment. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred by dismissing Joseph's claims against Liling: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); Rule 12(b)(1), SCRCR (providing a circuit court may dismiss an action over which it lacks subject matter jurisdiction); S.C. Code Ann. § 63-3-530(A) (2010 & Supp. 2014) (defining the subject matter over which the family court has exclusive jurisdiction); *Appeal of Sexton*, 298 S.C. 359, 360, 380 S.E.2d 832, 833 (1989) ("The [f]amily [c]ourt has exclusive jurisdiction to hear and determine actions for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage" (alteration by court) (internal

quotation marks omitted)); *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (stating subject matter jurisdiction is a question of law, and this court may decide it without deference to the circuit court); *Baird v. Charleston Cnty.*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999) (stating "evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on lack of jurisdiction," such as "when the allegations of the complaint are factually sufficient under Rule 8(a)(1), SCRCp, but do not affirmatively show subject matter jurisdiction"); Rule 201(b), SCRE ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the [circuit] court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); Rule 201(d), SCRE ("**(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information."); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding.").

2. As to whether the circuit court erred by dismissing Joseph's claims against Matyushevsky and CODA, dismissing all but one of his claims against Varg, and denying his motion for leave to amend his complaint: Rule 12(b)(6), SCRCp (providing a circuit court may dismiss a complaint when the defendant demonstrates the plaintiff's complaint fails to allege facts sufficient to constitute a cause of action); *Dawkins v. Union Hosp. Dist.*, 408 S.C. 171, 176, 758 S.E.2d 501, 503 (2014) (stating that when reviewing a dismissal pursuant to Rule 12(b)(6), SCRCp, "the appellate court applies the same standard of review as the [circuit] court—whether the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court"); *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014) (recognizing a circuit court may take judicial notice of previously entered, related court orders and consider them when ruling on a Rule 12(b)(6), SCRCp, motion to dismiss); Rule 201(f), SCRE ("Judicial notice may be taken at any stage of the proceeding."); *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986) ("[A]n attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution."); *Stiles v. Onorato*, 318 S.C. 297, 298-300, 457 S.E.2d 601, 602-03 (1995) (finding the plaintiff's complaint "was fatally deficient" because "the only reasonable inference is that [the attorney who had been sued] was acting at all times in his capacity as [an] attorney"); *Lee v. Bunch*, 373 S.C. 654, 660, 647 S.E.2d 197, 200 (2007) (stating the decision to

grant leave to amend pleadings lies within the sound discretion of the circuit court).

3. As to whether the circuit court erred in granting Varg summary judgment and denying Joseph's continuance motion: *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 576, 762 S.E.2d 696, 700 (2014) (stating that when reviewing a grant of summary judgment, this court applies the same standard applied by the circuit court pursuant to Rule 56(c), SCRCPP); *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) ("Summary judgment is proper if, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law."); *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009) ("A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror. . . . [A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact."); *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("The grant or denial of a continuance is within the sound discretion of the [circuit court] and is reviewable on appeal only when an abuse of discretion appears from the record. Moreover, the denial of a motion for a continuance on the ground that [a party seeking a continuance] has not had time to prepare is rarely disturbed on appeal." (citation omitted)).

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Carmen Mullen, Circuit Judge
Marvin H. Dukes, III, Master-In-Equity**

**APPEAL CASE No. 2011-204367
Circuit Court Case No. 2011-CP-07-02546**

**OLESYA MATYUSHEVSKY, CITIZENS
OPPOSING DOMESTIC ABUSE, CHRISTINE
VARG and LILING SUN Respondents**

v.

JOSEPH C. SUN Appellant

AMENDED FINAL BRIEF OF APPELLANT

**JOSEPH C. SUN, Appellant pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963**

**J. Sam Scoville, Esq.
P.O. Drawer 1107
Beaufort, SC 29901**

**Jackson H. Daniel, III, Esq.
40 Calhoun Street, Suite 400
Charleston, SC 29401**

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STATEMENT OF ISSUES ON APPEAL

- (1) It is error of the circuit court to issue an order dismissing complaint as to Defendant LiLing Sun on November 9, 2011.
- (2) It is error of the circuit court to issue an order on March 30, 2012 denying Appellant's motion to amend, and dismissing all claims against Defendant Matyushesky, Defendant CODA and Defendant Varg with the exception of the claims raised in Paragraphs 27 and 28 of the complaint.
- (3) It is error of the circuit court to issue an order on July 10, 2012 denying Appellant's motion for continuance and granting Respondent Varg's motion for summary judgment.

STATEMENT OF THE CASE

Appellant Joseph Sun filed a complaint pro se against the Respondents Olesya Matyushesky (hereinafter Olesya), Citizen Opposed to Domestic Abuse (hereinafter CODA), Christine Varg (hereinafter Varg) and LiLing Sun (hereinafter LiLing) on about June 15, 2011. In his initial complaint, Appellant Sun gave a Background of his Marriage with Defendant LiLing. In his Statement of Facts, he alleges wrongful acts committed by all the Respondents against him, during the divorce up to the filing of this case.

To clarify his complaint and to add certain missing facts, Appellant filed a Motion to Amend and Supplement with an attached proposed Amended Complaint. Respondent LiLing did not file an answer, but filed a Motion to Dismiss. Her motion was heard on October 19, 2011. Circuit Court Judge Carmen Mullen issued an Order Dismissing Complaint as to Defendant LiLing Sun on November 8, 2011. Appellant timely filed his Notice of Appeal.

Respondents Olesya, CODA and Varg filed their Answers and a joined Motion to Dismiss. Respondents' motion and Appellant's Motion to Amend Complaint were heard on March 13, 2012 when Judge Marvin Dukes, III, Master in Equity denied Appellant's motion to amend and granted Respondents' motion to dismiss "with the exception of the claim raised in Paragraphs 27 and 28 of Plaintiff's Complaint." Appellant also timely filed his Notice of Appeal.

Respondent Varg filed her motion for summary judgment in June 2012. Appellant immediately filed a Motion for Continuance on the ground that Respondents had not allowed any discovery. In a hearing in July 2012, Judge Dukes, Master in Equity, denied Appellant's motion for continuance and granted Respondent Varg's motion for summary judgment. Appellant again timely filed his Notice of Appeal.

Appellant Sun respectfully submits the court to take judicial notice that some of the facts argued in this case has already been presented in another appeal case pending before the court, Appeal Case No. 2010-162926.

STATEMENT OF FACTS

Respondent Olesya was the lawyer representing Respondent LiLing in a divorce action at the Beaufort County Family Court, Case No. 2009-DR-07-0628. That case is now on appeal at this court, Appeal Case No. 2010-162926. Respondent CODA was an organization which employed Respondents Olesya and Varg.

In his initial complaint, Appellant gave a background of his marriage with Respondent LiLing who signed a prenuptial agreement with Appellant prior to marriage in 1999. (R.p.61,85; pp.102-107) LiLing pretended initially to be a loving wife and good daughter in law to Appellant's

parents. Appellant and his parents from the beginning of the marriage, unaware of Respondent LiLing's scheme and ulterior motive, therefore rendered numerous physical and financial means to help Respondent LiLing to gain her "Green Card" and citizenship in a short period after her arrival in 1999. (R.p.61,62,86)

Appellant's father allowed Respondent LiLing to buy real estate property from the Sun Family Corporation with no down payment and small monthly installments so Respondent LiLing could have financial status in her application for Green Card and citizenship. Respondent LiLing was also employed in the family company so she could show immigration that she was gainfully employed. Respondent LiLing obtained her Green Card in less than one year, and her citizenship in about 3 years. Appellant drove Respondent LiLing from Jasper County to Charleston for the citizenship ceremony in 2005. Respondent LiLing then devised a scheme to hide the prenuptial agreement she signed and claim the real property in the family company as marital property when she had not made any payment on the property.

In his original and amended complaint, Appellant alleged several causes of action:
Fraud committed by Respondents LiLing and Olesya. (R.p.63,87)

Plaintiff's allegations show that these two Respondents served Appellant the Notice of Hearing only one day before the temporary hearing and used a wrong Certified Receipt to defraud the Family Court judge to deny Appellant's request for continuance. (R.p.64) Then they presented an altered warranty deed to gain temporary possession of the marital home knowing that the deed was not current and that the marital home was already deeded back to Appellant's mother by a collateral warranty deed which LiLing had signed earlier.

Respondent LiLing's fraud was that after she altered the warranty deed, filed it and conveyed the house to her name, she pretended to be a good wife and good daughter in law, and agreed to

make payments on the house, and signed another warranty deed back to Ah Tsao Sun as collateral. Appellant and his mother did not know about Respondent LiLing's fraud in the beginning because there was a Prenuptial Agreement prohibiting Liling from making any claim on real property which she did not purchase or pay for herself. That was the reason for the collateral warranty deed signed by LiLing to be kept by the Suns which could convey the real property back to Appellant's mother in case of default by LiLing. (R.p.62-63)

Appellant was not aware that Respondent LiLing was involved in an adulterous relationship with a Caucasian man who she met on the internet in late 2008 or January 2009. (R.p.65, line 21) In 2008, while Respondent LiLing was still married to Plaintiff Joseph found a job and had income. (R.p.63, line 1) Respondent LiLing invited Appellant and her mother who was visiting her from China at the time, to spend several days at Disney World, and paid for the accommodation. LiLing's mother knew nothing abnormal and Plaintiff happily took her mother to the Savannah airport for departure. LiLing misled Appellant and his mother to believe that she could be trusted.

After returning from the Florida trip, and after LiLing's mother returned to China, only a month later, in March 2009, Respondent LiLing abruptly moved out of the marital home into an apartment which she already found in Beaufort and signed a lease. Respondents Olesya and LiLing presented no evidence, only made false allegations of domestic violence and filed a divorce action against Appellant. Evidence showed that it was a preplanned scheme because the date on the apartment lease signed by LiLing in Beaufort predated her false claim of domestic violence. As aforesaid, Respondent Olesya scheduled a temporary hearing on June 25, 2009 but served Appellant the notice of hearing by Certified Mail on June 24, 2009 in violation of Family Court rule. (R.p.64, line 4) But by using a wrong Certified Receipt on the Notice of Hearing, Respondents LiLing and

Olesya defrauded the Family judge who denied Appellant's motion for continuance and was awarded several valuable items including the temporary possession of the marital home, a 2009 Toyota car and a 1 ½ Carat diamond ring. (R.p.3 and p.64)

Appellant was ordered to move out of the marital home immediately. Because of the one day notice before hearing, Appellant was totally unprepared and had no counsel at the hearing. He had no means to address the fraud committed by Respondents LiLing and Olesya and the injustice he had suffered. Appellant hired a lawyer who filed a motion for reconsideration of the pendent lite order which motion was hastily denied by the same Family Court judge.

Appellant suffered damages because Respondents LiLing and Olesya were awarded property and things which were his and the award was prohibited by the prenuptial agreement (R.p.102-107) which was covered up by Respondent Olesya. (R.p.64)

Some time in July 2009, Appellant was checking emails in several accounts some shared by his ex-wife Respondent LiLing, he found an email written by a Tony An to LiLing with an attachment of a naked erected penis and some other photographs of LiLing's apartment where the photographs showed that the laptop computer was left on the dining table at the entrance to the apartment kitchen where LiLing and Appellant's minor daughter Abigail were residing. Appellant was concerned that his daughter could see those photos of Tony's naked penis therefore immediately took those emails and photographs to the Guardian Ad Litem of the divorce case.

During the next visitation with his daughter Abigail who was only eight (8) at the time, Abigail told Appellant certain shocking facts which Appellant recorded on a recorder. Abigail told Appellant that "Tony" came to visit her mother LiLing for the first time the week before (in August 2009), and that after Tony and her mother was locked inside the bedroom for about an hour, they invited Abigail to join them in bed inside the bedroom, and represented to Abigail that

they were “cousins.” The three were in bed together making minor contacts. After Appellant explained that Tony, a Caucasian man and her mother, a Chinese woman cannot possibly be cousins, Abigail cried hysterically because her mother had lied to her. The next working day, Appellant again took the tape recording to the Guardian Ad Litem. (R.p.65,90)

During the period in 2009, when Appellant was without representation of legal counsel, he served Respondent Olesya discovery which included Request for Admissions and Interrogatories. Respondent Olesya did not respond as required by South Carolina Rules of Civil Procedure. After the temporary hearing, Appellant filed a Supplemental Affidavit, informing the Family Court of the untimely and insufficient service of the Notice of Temporary Hearing, and that there were internet pornography and indecent adults and child in bed together in Respondent LiLing’s apartment. Respondent Olesya responded by signing a statement making numerous false accusation against the Appellant and allowed Respondent LiLing to sign a verification of the statement signed by her.

Respondent Olesya did not file a Certificate of Service and did not serve Appellant a copy of her statement and LiLing’s Verification. Appellant inadvertently found out about the aforesaid statement and verification when he examined the file of the divorce case at the Family Court. (R.p.65,90) Appellant filed a bar complaint against Respondent Olesya because of the untimely service of the Notice of the temporary Hearing and the refusal of Olesya to comply with the Rules of Civil Procedure to serve Appellant a copy of document she filed at the Family Court when Appellant was representing himself at the time. Respondent Olesya thereafter committed numerous malicious and wrongful acts on her own as her vengeance against the Appellant. (R.p.65-69, 90-95)

After Appellant exposed the indecent activity of Respondent LiLing as Appellant was

concerned that there might be adverse effect on his minor daughter Abigail, a series of retaliation and malicious activity committed by all the respondents started. Respondent LiLing lost her driver's license in about September 2009 due to certain violation, therefore, could not go to the exchange location to pick up Abigail after visitation on one weekend. She called Appellant and told him to keep Abigail for an extra day so she could find someone to drive her to the exchange location. The next day, on Monday, Respondents LiLing, Olesya and Varg all came to Appellant's home with the Bluffton police and had Appellant arrested for refusing to return Abigail to her mother. Several hours later, Appellant was released because there was no evidence of any wrongdoing. Appellant was 62 years old at the time and suffering rheumatoid arthritis and asthma. Appellant was hand-cuffed on his back and left inside a hot police car for over 3 hours. Appellant had to visit a doctor and took medication for pain and discomfort for several weeks.

One day next year, after visitation with his daughter when Appellant followed the verbal agreement made with Respondent LiLing and daughter Abigail, that he would deliver a Sprinkler pool to the marital home with his truck, Appellant was arrested by the Bluffton police again. Respondent Olesya was present and assisted the Bluffton police in the malicious arrest without cause. Several days later, Appellant was released on bail. He then called Respondent LiLing to ask for visitation of Abigail pursuant to pendent lite order. Again, Appellant was arrested repeatedly in 2010 for trespassing, unlawful phone call, burglary, possession of burglary tools and stalking. (R.p.65-69; 90-95. Judicial Notice of Record in Appeal Case No. 2010-162926) Several charges fabricated by Respondents LiLing and Olesya have been dismissed or found not guilty and some are pending since about April 2010. Appellant has not been convicted of any charge.

The divorce trial was conducted in September 2010 when Appellant was still in jail. Some time before and after the divorce trial, Respondent LiLing per instruction and coaching by

Respondent Olesya broke into Appellant's residence in Jasper County at least twice, destroyed a heavy duty Sentry safe, a large key box and a file cabinet and stole everything inside the safe which was full of valuables including some jewelry, titles on cars, trucks and boats, original warranty deeds and prenuptial agreement, cash, savings bonds and gold coins and much more. In a deposition at the Beaufort Family Court, Respondent LiLing admitted that she did break in Appellant's home, broke open his safe and took all its content and many other items. She also admitted carrying minor daughter Abigail to commit the burglary. Respondent Varg who was a large size woman undoubtedly assisted in the theft because she admitted knowledge of the burglary to the police who made the report. (R.p.108-114)

During Respondents' multiple burglary of Appellant's home, she destroyed numerous items, including equipments beside the house when she climbed through the rear window. LiLing used electric grinder, long crow bar and sledge hammer found in the basement of Appellant's home to open the safe, and in the process causing damages to the floor and the walls in the house. The prenuptial agreement stolen was never presented to the divorce court even though a copy was presented and filed at the temporary hearing in June 2009. (Judicial Notice of transcript in Appeal Case No. 2010-162926.)

During the same period in 2010, while Appellant was still in jail due to fabricated charges made by Respondent LiLing and Olesya, these two defendants made numerous harassing phone calls and wrote threatening letters to Appellant's 90 year old mother in Canada, telling the old lady that they intended to subpoena her to the Family Court trial unless they were paid \$200,000.00. (R.p.66,91) Appellant's 90 year old mother was already in distress because her son, Appellant was in jail when he had committed no crime, could not take the harassment from these respondents, fainted and fell down the stairs and went into a coma. After struggling almost a year, in and out of

the hospital several times, Appellant's mother finally died of some complication. Before she died, Appellant's mother agreed to give Respondent LiLing \$75,000.00 to stop the harassment and signed a Settlement Agreement with Respondent LiLing through Respondent Olesya during the time when Appellant was in jail without knowledge of what had happened or agreed to by the parties. (R.p.66,67,91,92)

While the divorce case was pending trial, Respondent Olesya wrote letters and made phone calls to other lawyers and law enforcement making false derogatory remarks against Appellant calling Appellant a criminal involving in serious crimes when Appellant has not been convicted of any charges made by Olesya without the knowledge of her client LiLing. Respondent Olesya committed Libel and slander against the Appellant surely not as part of her representation of Respondent LiLing who spoke little English. All the defamatory communication was unrelated to the divorce case, but for her own purpose of vendetta because Appellant filed a bar complaint against her. (R.p.68,92)

After receiving the settlement of \$75,000.00 from Appellant's mother, Respondent LiLing moved out of the marital home. She took numerous valuable items in a large U-Haul trailer including furniture and antique items with her all in violation of the prenuptial agreement and the divorce decree. (R.pp.51-58, 102-107) Because of the respondents' malicious acts of using false and fabricated charges to put Appellant in jail until after the divorce trial and settlement, these respondents collectively and individually incapacitated Appellant Sun from raising the issue of prenuptial agreement. (R.p.93,94)

Appellant wrote several letters to the director of Respondent CODA complaining against Respondents Olesya and Varg, informing the director of the wrongful acts committed by them, and asked to show evidence in a meeting. Respondent CODA did not respond, but gave the letter to

Respondent Olesya and made a false accusation against Appellant of trespassing the office of CODA. Respondent CODA condoned, aided and abetted Respondent Olesya and Varg in their malicious and criminal activity against the Appellant.

All the respondents had individually and collectively caused damages and personal injury to Appellant. Appellant is entitled to recover damages from all Respondents jointly and severally.

ARGUMENTS

The circuit court in several hearings, in granting respondents motions to dismiss, made erroneous assumption that all wrongful acts alleged in the complaint and amended complaint were already or should have been litigated in the family court. Most of all, the circuit court made the assumption that all malicious acts committed by Respondents Olesya, Varg and CODA against the Appellant were part of their representation of Respondent LiLing, and applied the South Carolina Supreme Court holding in Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1965); and the Court of Appeals holding in Gaar v. North Myrtle Beach Realty, 287 S.C. 525, 339 S.E.2d 887 (1985).

ISSUE 1: Circuit Court is erroneous in its Order of November 9, 2011, (R.p.13, lines 9-13) that Appellant stated insufficient facts to constitute a cause of action for fraud; that in Para. 15 (R.p.13, lines 17-21), Appellant failed to allege special damages for civil conspiracy; that in Para. 16 (R.p.13, lines 21 through p.14, line 4), on claims of malicious prosecution, Appellant failed to allege the proceedings have been terminated in his favor; and in Paras. 17 and 18 (R.p.14, lines 4-10) that all Appellant's claims for trespass, adultery, theft, burglary, conspiracy, libel and slander were part of another action pending between the parties and that those claims were within the

exclusive jurisdiction of the family court.

At the hearing on October 19, 2011 (R.p.134-138), after Respondent counsel presented his exhibits A - C as stated in the November 9, 2011 Order (R.p.10), the Circuit Judge summarily directed counsel to prepare an Order for her to sign and dismissing the complaint against Respondent LiLing Sun. The hearing lasted less than 10 minutes as transcript can show. Respondent counsel did not present any evidence that showed all Appellant's claims in the within complaint against Respondent LiLing were or had been litigated in another action because there was no such other action.

The Family Courts in South Carolina were created as courts of limited jurisdiction, see South Carolina Code of Law § 63-3-10. The "exclusive jurisdiction" of the Family Court is clearly outlined in Section 63-3-530. Respondent LiLing has not shown any of Appellant's claims fall within the statutory jurisdiction of the Family Court. Though not artfully done, pro se Appellant's allegations state sufficient facts on Respondent LiLing's involvement, commission and conspiracy to commit numerous wrongful and/or criminal acts of forgery, perjury, fraud, false arrest, malicious prosecution, harassment, criminal trespassing and burglary, just to name a few, causing Plaintiff damages and personal injury. (R.p.63-68, 87-95)

Appellant alleges conspiracy of Respondent LiLing with some or all other Respondents in their scheme against Plaintiff causing him damages and injury. Appellant should be allowed pretrial discovery to determine any evidence of conspiracy between Respondent LiLing and all the other Respondents.

In his amended complaint, Appellant alleges Respondents LiLing and Olesya used a false Certified Receipt to defraud the Family Court judge to deny Appellant's motion for continuance, then presented an altered warranty deed which was already superceded by another warranty deed at

the temporary hearing to unjustly obtain temporary possession of the house fully paid for and titled in Appellant's mother's name. (Judicial Notice of Record and Appellant's Brief in Appeal Case No. 2010-162926) The Prenuptial Agreement if made known in divorce court should bar any possession of the marital home by Respondent LiLing. In order to completely bury the Prenuptial Agreement, these Respondent used numerous tricks and false pretense to repeatedly put Appellant in jail in 2010. While Appellant was in jail, these Respondents conspired to break in Appellant's residence and destroy his safe and file cabinet, and steal the original Prenuptial Agreement and numerous other valuables and documents. (R.p.108-114)

In an unrelated case between Respondent LiLing and Appellant, LiLing testified that she broke in Appellant's home and committed the burglary and theft at least with the knowledge, if not per instruction and counseling, of Respondent Olesya. Respondent Varg admitted to the police that she also knew about the burglary and theft, therefore was also involved. (R.p.109) Most importantly, numerous of the documents and valuables stolen by Respondent LiLing were found in Respondent CODA's office, and Respondent Olesya even took a car title of the 2009 Toyota that LiLing was driving to Appellant's divorce counsel and demanded signature to convey the title from Appellant's mother to LiLing.

Even Respondents LiLing and Olesya were successful in the burglary and theft of the original Prenuptial Agreement (R.p.102-107), a copy of it had been filed in the divorce case after the temporary hearing in 2009. In fact, Respondent Olesya even filed a motion in 2009 attempting to set aside the prenuptial agreement on the pretentious ground that Respondent LiLing could not understand English and might have signed the Prenuptial in error. The motion to set aside was abandoned later by the Respondents. Therefore, these Respondents cannot be heard that they did not know the existence of the Prenuptial.

Property excluded, by written contract or antenuptial agreement, from marital estate is non-marital property over which the family court has no jurisdiction. Circuit court had jurisdiction to enforce postnuptial agreement regarding non-marital property. Code 1976, § 20-7-473; Rules Civ.Proc., Rule 53(b). Bailey v. Bailey, 330 S.C. 326, 498 S.E.2d 891 (1998).

Respondent LiLing can have no claim on any marital property because she came to the United States to marry Appellant empty handed and she had not purchased any real property of her own prior to divorce. Without considering the Prenuptial Agreement, the only land she attempted to buy from Appellant's father was not paid therefore it was returned to the original owners by the collateral warranty deed signed by LiLing.

Circuit Court is erroneous in holding that Appellant's claims of damages caused by Respondents' trespass, adultery, theft, burglary, wrongful arrests, libel and slander, and fraud were part of the divorce action therefore should be dismissed for being within the exclusive jurisdiction of the family court. (R.p.14,line 10) In Thompson v. Ballentine, 298 S.C. 289, 379 S.E.2d 896 (1989) the South Carolina Supreme Court held that the family court has no jurisdiction to award damages. Therefore, jurisdiction of the within action lies at the Circuit Court.

It is important to note that in its "analysis" (R.p.11, lines 10-12), of the October 19,2011 Order, the Circuit Court found that Appellant "appears to allege fraud, adultery, forgery, wrongful arrest and incarceration, libel and slander, burglary, theft, trespass and conspiracy." Therefore, Circuit Court already found that Appellant sufficiently alleged several causes of action against the Respondents. The Circuit Court erroneously ruled that those causes of action should be in the jurisdiction of the family court.

Further more, it was improper for the Circuit Court to consider the exhibits presented by

Respondent LiLing in another case though related. In Charleston County School District v. Harrell, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (2011), The South Carolina Supreme Court held that,

“Trial court improperly considered matters outside the pleadings in deciding state's motion to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action when it went outside the four corners of the complaint and cited to a federal district court case with regard to county's unique geography. Rules Civ.Proc., Rule 12(b)(6).”

ISSUE 2: As aforesaid, Circuit Court is erroneous in assuming that all the wrongful acts committed by the Respondents were part of their representation of Respondent LiLing which is a question of facts for the jury. Attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to third person or acts in his own personal interest, outside scope of his representation of client. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). Ruling on motion to dismiss for failure to state claim for which relief could be granted must be based solely upon allegations set forth on face of complaint; motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory. Rules Civ.Proc., Rule 12(b)(6). Id.

In their arguments before another circuit judge on March 13, 2012, Respondents Olesya, Varg and CODA asked the Circuit Court to follow the prior Court Order regarding their defendants and attached the prior Circuit Court Order as their authority in support. (R.p.165) Therefore, Appellant sufficiently alleges several causes of action of fraud, adultery, forgery, wrongful arrest and incarceration, libel and slander, burglary, theft, trespass and conspiracy. (R.p.11, lines 10-12) These Respondents' claim that they were only involving in all the aforesaid

wrongdoings were mere “actions taken in the representation of a client” is certainly unsustainable. In any event, if their actions were indeed taken in their representation, they have to prove it, not merely claim it verbally. In a motion to dismiss, the burden is on them to show why they are entitled to relief and all allegations and inferences are taken most favorable to the Plaintiff-Appellant. In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. Rules Civ.Proc., Rule 12(b)(6). Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 (2009). Ruling on motion to dismiss for failure to state claim for which relief could be granted must be based solely upon allegations set forth on face of complaint; motion may not be sustained if facts alleged and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory. Rules Civ.Proc., Rule 12(b)(6). Stiles v. Onorato, supra.

All the Respondents have not presented anything to show that they committed or conspired to commit all the wrongful acts with the consent or knowledge of their client Respondent LiLing who spoke little English and could not possibly conspired with them to commit libel and slander, for example. In a phone conversation when Appellant was appearing pro se, Respondent Olesya admitted that she acted without her client knowledge.

Appellant may not have alleged artful allegations that those Respondents had acted outside the scope of their representation. However, the proper application of Rule 12(b)(6) of the Civil Procedure is to make all inferences in favor of the non-movant, the Appellant. Therefore, inferences must be made that the Respondents acted outside of their representation of their client. On a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the question is whether, in the light most favorable to plaintiff, and with every doubt

resolved in his behalf, the complaint states any valid claim for relief. Rules Civ.Proc., Rule 12(b)(6). Cole Vision Corp. V. Hobbs, 384 S.C. 283, 680 S.E.2d 923 (2009).

Therefore, it is proper and a requirement that inferences be made that the Respondents acted either outside of their representation or on their own volition as their personal vendetta against the Appellant.

Appellant's motion to amend should be granted.

ISSUE 3: Appellant should be allowed pretrial discovery because it is erroneous and an abuse of discretion for Circuit Court to hastily conclude that "Plaintiff has not demonstrated a likelihood that discovery would uncover additional relevant evidence." (R.p.21) Although the case had been pending for almost a year, it had two (2) prior motions to dismiss and hearings to determine if the case could go on. Appellant had shown at the hearing on July 12, 2012 that he had written Counsel for Respondents requesting a date for deposition, but counsel had ignored Appellants request. (R.p.236,255)

Without allowing Appellant the benefit of any discovery, Respondent Varg simply filed an affidavit claiming she was not present at the time when Respondent LiLing was admittedly breaking in Appellant's residence, and was granted a summary judgment from the case. According to the Jasper County police report and the deposition of LiLing, Respondent Varg had knowledge of the break in and the details of all property stolen by LiLing either on the same day or very soon after. (R.p.108-114) Appellant should be allowed to explore by discovery Respondent Varg's involvement in the burglary and theft.

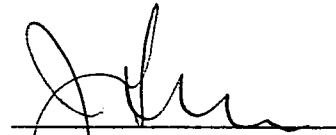
Appellant's right to pretrial discovery should not be denied and Respondent Varg should

not be granted a summary judgment.

CONCLUSION

For the foregoing reasons, the Circuit Court Orders of November 9, 2011, April 6, 2012 and July 18, 2012 should all be reversed.

Respectfully submitted,

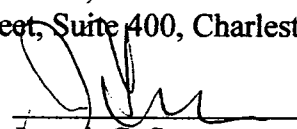


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

PROOF OF SERVICE

I certify that I have this date served the Appellant's Amended Final Brief on all Respondents by depositing a copy of same in the U.S. Mail postage prepaid, on July 19, 2014, addressed to their attorneys on record as follows:

J. Sam Scoville, Esq. P.O. Drawer 1107, Beaufort, SC 29901
Jackson H. Daniel, III, Esq. 40 Calhoun Street, Suite 400, Charleston, SC 29401



Joseph C. Sun, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Carmen Mullen, Circuit Judge
Marvin H. Dukes, III, Master-In-Equity**

**APPEAL CASE No. 2011-204367
Circuit Court Case No. 2011-CP-07-02546**

**OLESYA MATYUSHEVSKY, CITIZENS
OPPOSING DOMESTIC ABUSE, CHRISTINE
VARG and LILING SUN Respondents**

v.

JOSEPH C. SUN Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

This 19th day of July, 2014.



JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
Marvin H. Dukes, III, Master-In-Equity

Case No. 2011-CP-07-2546

Appellate Case No. 2011-204367

Joseph C. Sun,

Appellant,

v.

Olesya Matyushevsky, Citizens Opposing
Domestic Abuse, Christine Varg and Liling
Sun,

Respondents.

Respondent Liling Sun's Final Brief

Harvey & Battey, P.A.
J. Sam Scoville, S.C. Bar # 76676
P.O. Drawer 1107
Beaufort, SC 29901
(843)-524-3109
Attorney for Respondent
Liling Sun, now known as Liling Walsh

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Statement of Issues on Appeal

- A. Did the Trial Court err in dismissing Appellant's cause of action for fraud against Respondent Liling when Appellant failed to allege he relied upon the misrepresentations or that such caused him damage?
- B. Did the Trial Court err in dismissing Appellant's cause of action for civil conspiracy against Respondent Liling when he failed to allege such conspiracy caused him special damages?
- C. Did the Trial Court err in dismissing Appellant's cause of action for malicious prosecution against Respondent Liling when he failed to allege that a proceeding had been terminated in his favor?
- D. Did the Trial Court err in dismissing Appellant's causes of action for trespass, adultery, theft, burglary, and fraud against Respondent Liling as being within the exclusive jurisdiction of the family court?
- E. Did the Trial Court err in dismissing Appellant's causes of action for libel and slander as to Respondent Liling when Appellant made mere conclusory allegations in support of these claims?

Statement of the Case

Pursuant to Rule 208(b)(6) SCACR, Respondent Liling adopts the Statement of the Case presented in the Initial Brief of Respondents Olesya Matyushevsky, Citizens Opposed to Domestic Abuse and Christine Varg.

Facts of the Case

Appellant and Respondent Liling Sun (now known as Liling Walsh and hereinafter referred to as “Liling”) were divorced following a difficult marriage which included a history of abuse by Appellant against Liling. R. at 63. Appellant and his mother, Ah Tsao Sun who was named as a third party defendant by virtue of Liling’s allegation that marital property was titled in her name, were represented by the same counsel in the divorce and each entered into settlement agreements with Liling to resolve the matters before the Court. R. at 40. These agreements were incorporated into the Family Court’s Divorce Decree. R. at. 42, 48. Shortly after the divorce, Appellant ruled Liling into the Family Court claiming she wrongfully removed certain personal property from the marital residence prior to the divorce. Motion for Rule to Show Case, p. 1. At the hearing on that matter, Liling agreed she had a bicycle, loveseat and table and agreed to return them. R. at 25. The Family Court ordered the parties, through their representatives, to go to Liling’s apartment and make an inventory of all property. *Id.* Though they went to her apartment and searched it, Appellant’s representatives in the matter never made an inventory. One month after the Rule to Show Cause hearing on the personal property, Appellant filed this action in the Court of Common Pleas, seeking damages totaling 3.3 million dollars against Liling, her divorce lawyer, and the agency which assisted Liling as the victim of Appellant’s abuse, and an employee of that agency. R. at 60-70. All of Appellant’s allegations in the Complaint pre-date the date of the divorce decree. R at 60-69, 40.

In his Complaint, Appellant accuses Liling of all sorts of bad conduct, from “adultery and involvement in pornography,” to the horrific claim of having sex with her paramour and then calling their minor child to “join them in bed several times.” R. at 63-65.

For his cause of action for fraud, Appellant alleges: his mother gave him a deed to a property known as Bluffton Park and Liling offered to take it to be recorded in the Register of Deeds Office. R. at 63. Someone in the County Assessor’s office thereafter told him that their records indicated that this property was owned by Liling, not him. *Id.* He confronted Liling about this and she “pretended to be a loving wife told [Appellant] that there was no difference whose name the house was titled [sic], and that she would make payment to Ah Tsao Sun on the house. *Id.* She further agreed to apply for the 4% tax, and in addition sign a warranty deed on the house back to [Appellant’s] mother Ah Tsao Sun as her collateral.” *Id.* This, he claims, served as the basis for the Family Court judge ordering Liling to have temporary possession of the marital home. R. at 64.

Appellant’s mother, though a party to the divorce action and property settlement agreement which serves as the basis for most of Appellant’s claims, is not a party to this action, nor was any appeal made on her behalf. R. at 60.

Though Appellant never uses the words “malicious prosecution” in his Complaint, the trial court considered that cause of action in the order dismissing the case as to Liling. R. at 13-14. Appellant alleges that Respondents “fabricated lies,” and “used false accusations to have [Appellant] arrested and put in jail repeatedly from March 2010 until September 2010, just so they could accomplish their fraudulent and criminal schemes.” R. at 66. Appellant alleges he “was incarcerated unjustly and suffered depression and mental pain.” *Id.* He does not allege the criminal actions were terminated, much less terminated in his favor. R. at 13-14.

Appellant alleges Liling “fabricated lies of harassment, unlawful phone calls, stalking, possession of burglary tools and burglary without any evidence or witness,” “used false accusations to have Plaintiff arrested and put in jail,” and “made false and malicious slander and libel against Plaintiff.” R. at 66-67. He does not allege what the specific statements were.

Finally, Appellant ends his Complaint with a prayer for relief seeking 3.3 million dollars in actual and punitive damages. R. at 69-70.

Standard of Review

An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Id.* “A pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief . . .” Rule 8(a) SCRPC “Factual allegations are required and conclusionary allegations may be disregarded.” Robert Flanagan, *S.C. Civil Procedure* 102 (3rd ed. 2010). The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

Pursuant to Rule 12(b)(1), SCRPC, the movant challenges the power of the court over the subject matter. The question of subject matter jurisdiction is a question of law for the court. *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993). The appellate court is free to decide questions of law with no deference to the trial court. *Catawba Indian Tribe of S.C. v. State of S.C.*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007).

While the appellate court utilizes the same standard of review as the circuit court in scrutinizing the application of Rule 12(b)(8), each of the components of the rule are determined as a matter of law and thus it applies a de novo standard of review to the grant or denial of this motion. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 99-100, 674 S.E.2d 524, 528 (Ct. App. 2009)

Arguments

1. Appellant's failure to allege reliance or damages are fatal to his cause of action for fraud.

To establish a cause of action for fraud, Plaintiff must allege and prove nine elements by clear, cogent, and convincing evidence, including his reliance on the truth of a statement and the his consequent and proximate injury. *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007) Failure to prove any element of fraud or misrepresentation is fatal to the claim. *Id.*

Even viewing the Complaint in the light most favorable to Appellant, he fails to plead that he detrimentally relied upon a misrepresentation. The misrepresentation he alleges is that Liling said she was going to record the deed with him as grantee and she did not do it. He claims she recorded a deed making her, not him, the grantee of the property. He does not claim to have acted upon this and suffered as a result. Rather, he claims the Family Court Judge acted upon this and granted Liling temporary possession of the marital residence. Appellant's claim of fraud thus fails. The Trial Court properly dismissed Appellant's cause of action for fraud against Liling on the grounds that Appellant stated insufficient facts to constitute a cause of action.

2. Appellant's failure to allege special damages are fatal to his claim of a civil conspiracy.

Appellant failed to plead that he suffered special damages as a result of a civil conspiracy and it was thus proper for the Trial Court to dismiss this cause of action against Liling.

“The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage.” *Benedict Coll. v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 545, 735 S.E.2d 518, 521 (Ct. App. 2012). “While general damages are the immediate, direct, and proximate result of the tortfeasor's conduct, special damages are the natural, but not the necessary or usual, consequence of the tortfeasor's conduct.” *Id.* (internal quotations omitted)

In the *Benedict Coll.* case, the Plaintiff sued the defendant for breach of contract, fraud, fraud in the inducement, and unjust enrichment, all arising out of a contractual agreement. 400 S.C. at 542-43, 735 S.E.2d at 520-21. The defendant counterclaimed alleging its own breach of contract claim and one for civil conspiracy. *Id.* The defendant claimed that Plaintiff, and a third party not authorized to act on behalf of the defendant, engaged in a conspiracy to bind the defendant to contractual terms it had not agreed to. *Id.* 400 S.C. at 542-44, 735 S.E.2d at 520-21. The S.C. Court of Appeals held the trial court's dismissal of the defendant's counterclaim of conspiracy was in error because the “special damages” the defendant claimed were “the costs and attorney's fees associated with the defense of [the College]'s allegations [for breach of contract].” *Id.*, 400 S.C. at 546, 735 S.E.2d at 522 (internal quotations omitted). The defendant was effectively arguing that the plaintiff's conspiracy had put them into a position of having to pay legal fees and costs to defend a breach of contract action. The *Benedict Coll.* defendant thus claimed special damages, as opposed to general damages in its conspiracy claim.

The Appellant in the present case does appear to claim damages in the form of legal fees and costs related to the alleged conspiracy. He alleges general damages, however, rather than special damages. For this reason, this Court should affirm the Trial Court's dismissal of Appellant's conspiracy cause of action against Liling.

3. Appellant's failure to allege that any proceedings have been terminated in his favor is fatal to his claim for malicious prosecution.

"In order to recover in an action for malicious prosecution, 'the plaintiff must show (1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by, or at the instance of, the defendant; (3) termination of such proceeding in plaintiff's favor; (4) malice in instituting such proceedings; (5) want of probable cause, and (6) resulting injury or damage.'" *Ruff v. Eckerds Drugs, Inc.*, 265 S.C. 563, 566, 220 S.E.2d 649, 651 (1975).

Appellant does not allege that the criminal proceedings which he argues were "wrongful" were terminated in his favor. As such, it was proper for the trial court to dismiss this cause of action against Liling and this Court should affirm.

4. Appellant's claims for trespass, adultery, theft, burglary, and fraud against Liling were within the exclusive jurisdiction of the Family Court.

The South Carolina Legislature has granted the family courts exclusive jurisdiction over marital litigation and disputes over marital property between spouses. Specifically, "The family court has exclusive jurisdiction . . . to hear and determine . . . marital litigation between the parties . . . for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage . . ." S.C. Code Ann. § 63-3-530 (1976) (as amended).

Every allegation Appellant makes in his Complaint regarding Liling occurred either before or during the divorce. He claims that while the divorce was pending, Liling "broke in" to one of the marital properties and removed personal property. His claim for fraud is based upon the family court's decision to award temporary possession of the marital home to Liling. Adultery is a ground for divorce, not a cause of action for damages. These allegations are thus "marital litigation" between Appellant and Liling concerning their "legal and equitable rights . . . to the real and

personal property of the marriage.” The Trial Court correctly dismissed these causes of action against Liling and this Court should affirm that decision.

5. Appellant’s failure to make specific factual allegations of libel or slander make dismissal of these against Liling appropriate.

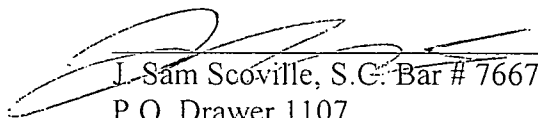
“The tort of defamation allows a plaintiff to recover for injury to her reputation as the result of the defendant's communication to others of a false message about the plaintiff.” *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998) “Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct.” *Id.* “In order to prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.” *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006).

The only allegation Appellant makes in his Complaint of defamatory statements by Liling are the conclusory allegations that she “fabricated lies of harassment, unlawful phone calls, stalking, possession of burglary tools and burglary without any evidence or witness,” “used false accusations to have Plaintiff arrested and put in jail,” and “made false and malicious slander and libel against Plaintiff.” Nowhere does Appellant state what the specific statements or writings were which were defamatory. As such, the Trial Court properly dismissed the claims against Liling on the grounds that Appellant alleged insufficient facts to state a cause of action. This Court should affirm.

Conclusion

The Trial Court properly dismissed Appellant's Complaint as the matters he alleges are either insufficient to state a cause of action, within the exclusive jurisdiction of the family court, or both. This Court should affirm the Trial Court.

Harvey & Battey, P.A.



J. Sam Scoville, S.C. Bar # 76676
P.O. Drawer 1107
Beaufort, SC 29901
(843)-524-3109
Attorney for Respondent
Liling Sun, now known as Liling Walsh

Dated: May 16, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
Marvin H. Dukes, III, Master-In-Equity

Case No. 2011-CP-07-2546
Appellate Case No. 2011-204367

Joseph C. Sun,

Appellant,

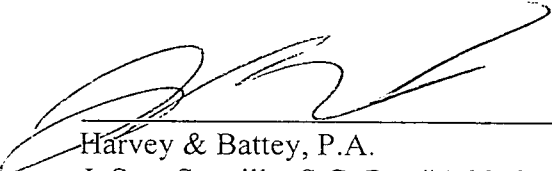
v.

Olesya Matyushevsky, Citizens Opposing
Domestic Abuse, Christine Varg and Liling
Sun,

Respondents.

Certificate of Counsel

The undersigned certifies that this Final Brief complies with Rule 211(b) of the
South Carolina Appellate Court Rules.



Harvey & Battey, P.A.
J. Sam Scoville, S.C. Bar # 76676
P.O. Drawer 1107
Beaufort, SC 29901
(843)-524-3109
Attorney for Respondent
Liling Sun, now known as Liling Walsh

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
Marvin H. Dukes, III, Master-In-Equity

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Common Pleas Case No. 2011-CP-07-2546

Joseph C. Sun. *Pro se*,

Appellant,

v.

Olesya Matyushevsky,
Citizens Opposed to Domestic Abuse,
Christine Varg and Liling Sun,

Respondents.

**FINAL BRIEF OF RESPONDENTS OLESYA MATYUSHEVSKY, CITIZENS
OPPOSED TO DOMESTIC ABUSE AND CHRISTINE VARG**

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Charles J. Baker III (S.C. Bar No. 486)
5 Exchange Street
Post Office Box 999
Charleston, SC 29402-0999

CARLOCK, COPELAND & STAIR, LLP
Sarah E. Wetmore (S.C. Bar No. 17235)
Jackson H. Daniel III (S.C. Bar No. 70308)
40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
Attorneys for Respondents

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT PROPERLY DISMISS SUN'S TORT CLAIMS AGAINST HIS EX-WIFE'S DIVORCE LAWYER AND HER PARALEGAL?
- II. DID THE CIRCUIT COURT CORRECTLY DENY SUN LEAVE TO AMEND HIS COMPLAINT?
- III. DID THE CIRCUIT COURT PROPERLY GRANT SUMMARY JUDGMENT FOR PARALEGAL VARG ON THE CLAIM RELATING TO THE ALLEGED CONVERSION OF SUN'S PERSONAL PROPERTY?
- IV. DID THE CIRCUIT COURT CORRECTLY REFUSE TO CONTINUE THE SUMMARY JUDGMENT HEARING?

STATEMENT OF THE CASE

The Appellant, Joseph Sun ("Sun"), filed his *pro se* Complaint on June 15, 2011, against the Respondents, Olesya Matyushevsky ("Matyushevsky"), Citizens Opposed to Domestic Abuse ("CODA"), Christine Varg (Varg) and Liling Sun ("Liling"). The Complaint contained what appear to be claims for fraud, civil conspiracy, malicious prosecution, defamation, trespass and conversion.

Through her own counsel, Liling filed a Motion to Dismiss on June 19, 2011. The circuit court granted her Motion to Dismiss by Order filed November 9, 2011, and Sun timely appealed that Order on November 28, 2011.

Through their separate counsel, Matyushevsky, CODA and Varg filed an Answer on June 19, 2011, and subsequently filed a Motion to Dismiss on December 12, 2011. On December 15, 2011, Sun filed a Motion to Amend along with a proposed Amended Complaint.

The circuit court held a hearing on March 13, 2012, and issued an Order filed April 6, 2012, dismissing all claims with the exception of one claim against Varg only. In its Order, the circuit court concluded that the original Complaint may have stated a claim against Varg based

on the allegation she personally participated in an alleged break-in and conversion of Sun's personal property. The circuit court granted leave for Sun to file an Amended Complaint setting forth additional facts to support that claim. As to the other claims, the circuit court concluded that the proposed amendment contained only one new factual allegation which was obviously frivolous and without merit and therefore denied leave to amend. Sun timely appealed the April 6 Order on April 16, 2012.

Sun filed an amendment to his allegations against Varg on March 26, 2012 (following the March 13 hearing at which the circuit court announced its decision but before filing of the written Order on April 6). Because the amendment contained allegations against Matyushevsky and CODA as well as against Varg, they jointly filed an Answer to the Amended Complaint on April 11, 2012. On June 5, 2012, Varg filed a Motion for Summary Judgment as to the remaining claim against her along with supporting affidavits from herself and Liling, and a hearing was scheduled for July 12, 2012. After being notified of the hearing but prior thereto, Sun filed a Motion for Continuance on June 25, 2012, on the basis he had not yet taken the depositions of Varg and Liling.

Following the July 12 hearing, the circuit court issued an Order filed July 18, 2012, denying Sun's request to continue the hearing and granting Varg summary judgment. Sun timely appealed that order on July 30, 2012.

By order dated June 6, 2013, the Court of Appeals consolidated the appeals of the three orders dated November 9, 2011 (dismissal of Liling), April 6, 2012 (dismissal of Matyushevsky, CODA and Varg), and July 30, 2012 (summary judgment for Varg).

FACTS

Citizens Opposed to Domestic Abuse (“CODA”), a non-profit organization with offices in Beaufort County, South Carolina, provides support for victims of domestic violence. (Ans. of Matyushevsky, CODA, and Varg, p. 2, ¶ 2) (R. p. 72, ¶ 2). Olesya Matyushevsky (“Matyushevsky”) is a licensed South Carolina attorney and employed by CODA as a staff attorney. (Compl., p. 1, ¶ 1) (R. p. 60 ¶ 1). Christine Varg (“Varg”) is also an employee of CODA. She is not a lawyer but her duties include assisting Matyushevsky in legal matters involving persons who have sought help from CODA. (Compl., p. 1, ¶ 3; Affidavit of Christine Varg, p. 1) (R. p. 60 ¶ 3; R. p. 119).

As lawyer for Liling Sun (“Liling”), Matyushevsky filed an action for divorce on April 21, 2009, against Liling’s husband, Joseph Sun. (Compl., p. 4, ¶ 14) (R. p. 65, ¶ 14). Varg assisted Matyushevsky in her representation of Liling in the divorce proceedings acting in effect as a paralegal. (Affidavit of Christine Varg, p. 1) (R. p. 119).

The family court held a temporary hearing on June 25, 2009, at which time the court made various rulings, including granting Liling possession of the marital home and ordering Sun to leave the home immediately. (Pendente Lite Order, p. 3) (R. p. 3). On January 12, 2010, Matyushevsky filed a Motion for Contempt on behalf of Liling based on Sun’s violation of the temporary order. (Order filed March 12, 2010) (R. pp. 30-35). The family court held a hearing on March 2, 2010, and issued an Order on March 12, 2010, finding that Sun had willfully violated several provisions of the temporary order, including the order he leave the marital home. The family court ordered, among other things, that Sun would serve six months in the Beaufort

County Detention Center if he entered the marital home again for any reason after March 2. (Order filed March 12, 2010, pp. 3 and 5) (R. p. 32 and 34).¹

On March 30, 2010, Matyushevsky, on behalf of Liling, filed another contempt motion, which the family court heard on May 18. In an order filed June 21, 2010, the family court found that Sun had admittedly violated its previous order by entering the marital home at least two times since March 2. The family court sentenced Sun to six months in jail for criminal contempt of court. (Order filed June 21, 2010, pp. 2-3) (R. pp. 37-38).

One important issue in the divorce was whether two houses, one at 18 6th Avenue, Bluffton, South Carolina, and the other at 43 Broad View Drive, Knowles Island Plantation, Ridgeland, South Carolina, constituted marital property or whether they were non-marital property owned by Sun's mother. Because of this dispute, the family court made Sun's mother a party to the divorce action. (Decree of Divorce, p. 1, and incorporated Settlement Agreement, p. 3) (R. p. 40. and p. 53).

The family court held a final hearing over two days on September 1 and September 29, 2010. On September 18, during the period between hearing dates, Sun reported to the Jasper County Sheriff's Office that he believed Liling and an accomplice had entered the house at Knowles Island Plantation and taken various items of personal property, including keys, cash, jewelry, coins and assorted documents. The investigating deputy spoke to Liling, who said she would have her lawyer call him. Varg then called the deputy on Liling's behalf and told him that Liling did have papers from the Knowles Island house. (Report of Jasper County Sheriff's Office dated September 24, 2010, pp. 1-2; Affidavit of Christine Varg, pp. 1-2) (R. pp. 108-109 and R. pp. 119-120).

¹ Sun, who had appeared pro se at the temporary hearing, by this time had retained counsel to represent him in the divorce proceedings. (Order filed March 12, 2010, p. 1)(R. pp. 30-35).

Following the second hearing date, the family court issued a decree of divorce on October 13, 2010. In the decree, the family court approved and incorporated a settlement agreement regarding marital property between Liling and Sun's mother. In approving the property settlement, the family court relied, in part, on the mother's affidavit in which she stated she understood the terms of the agreement, believed it to be fair and equitable, was not under the influence of undue stress and was satisfied with the services of her attorney. (Decree of Divorce, pp. 2-3) (R. pp. 41-42).

Also as reflected in the decree of divorce, on the second day of the final hearing, Sun and Liling reached a settlement on the remaining issues of child custody, visitation, child support, alimony, attorney's fees, and guardian ad litem fees. (Decree of Divorce, pp. 3-9) (R. pp. 42-48). The family court granted a divorce on the grounds of continuous separation without cohabitation for a period in excess of one year.

ARGUMENTS

- I. MATUSHEVSKY AND VARG ARE IMMUNE FROM LIABILITY TO SUN BECAUSE THEIR ALLEGED WRONGFUL ACTS WERE PERFORMED IN THE COURSE OF THEIR LEGAL REPRESENTATION OF HIS EX-WIFE IN THE COUPLE'S DIVORCE PROCEEDING.

South Carolina law protects an attorney from being sued by third parties for actions taken in the representation of a client. *Gaar v. N. Myrtle Beach Realty Co.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986). "In his professional capacity the attorney is not liable . . . for injury allegedly arising out of the performance of his professional activities." *Id.* 287 S.C. at 529, 339 S.E.2d at 889. "Even if the attorney who initiates civil proceedings for his client has no probable cause to do so, he is still not liable if he acts primarily for the purpose of aiding his client in obtaining a proper adjudication of the client's claim." *Id.* To maintain claims against an attorney acting in her professional capacity, a plaintiff must allege the attorney "breache[d] some

independent duty to a third person or act[ed] in [her] own personal interest outside the scope of [her] representation of the client[.]" *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995) (affirming dismissal when the only reasonable inference to be taken from the face of the complaint was that the attorney had been sued by a third party for actions taken in his capacity as attorney).

South Carolina appellate courts review motions to dismiss under the same standard as the trial court. *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 320-321, 701 S.E.2d 39, 44 (Ct. App. 2010). A motion to dismiss "must be based solely on the allegations set forth in the complaint and [the Court] must presume all well-plead facts to be true." *Gressette v. S.C. Elec. and Gas Co.*, 370 S.C. 377, 378-79, 635 S.E.2d 538, 538 (2006). When considering a motion to dismiss, "[t]he question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007). Notwithstanding, at any stage in a proceeding the court may take judicial notice of adjudicative facts. These include those facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Rule 201, SOUTH CAROLINA RULES OF EVIDENCE.² In its order of April 6, 2012, the circuit court correctly dismissed Sun's claims against Matyushevsky and Varg because the allegations were based on actions taken in the representation of Liling and the complaint therefore failed to state facts sufficient to constitute a cause of action.³

Read in the light most favorable to Sun, his complaint has alleged the following:

² In this case, the records of the family court in Beaufort County are such a reliable source, and this Court, as did the circuit court, may take judicial notice of the family court's previously filed orders. *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239-40 (4th Cir. 1989) (courts may take judicial notice of proceedings in other courts of record).

³ Sun has pled no basis for CODA's liability other than the fact that Matyushevsky and Varg were its employees. If they are not liable, then CODA cannot be vicariously liable.

- (1) Matyushevsky filed a complaint in the divorce case containing unsupported allegations that Sun had committed domestic violence (malicious prosecution). (Compl., p. 4, ¶ 14; see also App. In. Bf., p. 5) (R. p. 63, ¶ 14).
- (2) Matyushevsky and Varg conspired with Liling to seek a property settlement for non-marital property (civil conspiracy). (Compl., p. 6, ¶ 18; see also App. In. Bf., p. 13) (R. p. 64-65)
- (3) Matyushevsky and Varg had Sun wrongfully arrested and incarcerated (malicious prosecution). (Compl., p., 7, ¶ 21 – 23; see also App. In. Bf. p. 9) (R. p. 66, ¶ 21-23).
- (4) Matyushevsky made libelous and slanderous statements about Sun (defamation). (Compl., p. 8, ¶ 24 -25; see also App. In. Bf., p. 11) (R. p. 67, ¶ 24-25).
- (5) Matyushevsky and Varg “coached” or advised Liling concerning the alleged break-in and theft at the Knowles Island house (trespass and conversion). (Compl., p. 8, ¶ 27-28; see also, App. In. Bf., p. 10) (R. p. 67, ¶ 27-28).
- (6) Matyushevsky failed to notify Sun of the temporary hearing in family court. submitted a false certification of the notice to the family court, and proffered altered deeds into evidence at the temporary hearing (fraud). (Compl., p. 5, ¶ 15 -16; see also App. In. Bf. 5 – 7) (R. p. 64, ¶ 15-16).

The policy reasons for prohibiting claims like these are readily apparent. In essence, Sun, as party to a divorce proceeding, is now suing his ex-spouse’s counsel based upon actions taken in advocating the case against him. The circuit court recognized this flaw in the claims at the dismissal hearing and informed Sun that most of his claims related to “lawyer/defendant and legal assistant/defendant and CODA’s actions as [his] wife’s counsel and assisting her counsel.” (Transcript of March 13, 2012 hearing, p.73, lines 9-12) (R. p. 222, lines 9-12). Even a liberal

reading of Sun's allegations demonstrates that his claims against Matyushevsky and Varg are for activities such as the following: initiating litigation setting forth the client's claims, making factual claims about abuse, notifying parties of legal proceedings, contacting the police to enforce a family court order, and coordinating and making arguments for property division and/or the client's custody of her child. These activities are all fundamental endeavors for an attorney involved in family court litigation.

Even Sun acknowledged that his claims are based on actions taken by Matyushevsky and Varg in representing his ex-wife:

Court: "... [T]hese are the individual defendants here in the course of their business as representing your ex-wife, wrote certain letters and made certain representations about you to third parties? Is that essentially what you're saying?"

[Appellant] Mr. Sun: "Yeah..."

...

Court: "But none of this was independent of their - - I don't think you've alleged or said - - independent of their connection with your wife . . . They weren't friends from long ago or anything like that?"

[Appellant] Mr. Sun: "I have no idea. I don't know ..."

...

Court: "... I think what you've asserted in here is these individuals came in contact with your ex-wife through CODA, through her contacting CODA, is that - -"

[Appellant] Mr. Sun: "Right, uh-huh."

Court: "- - the best of your information?"

[Appellant] Mr. Sun: "That's why CODA's involved."

(Transcript of March 13, 2012 Hearing, p.31, line 18- p. 32, line 19) (R. p. 180, line 18-p. 181, line 19).

The immunity afforded to legal counsel from lawsuits by adverse parties exists because allowing claims like those in the present action would chill the adversarial process and impede an attorney's ability to act in good faith based on information from clients and witnesses.

Sun's complaint also lacks substantive allegations that Matyushevsky and Varg violated any duty independent from the one owed to their client, Liling. After reviewing the allegations made in Sun's pleadings, including the proposed Amended Complaint,⁴ the circuit court correctly ruled he had failed to allege that Matyushevsky and Varg acted for their own benefit or stepped outside the scope of their representation of Liling. (April 6th Or., p. 4-5) (R. pp. 18-19).

II. THE CIRCUIT COURT CORRECTLY EXERCISED ITS DISCRETION TO DENY SUN LEAVE TO AMEND SINCE THE ONLY NEW FACTUAL ALLEGATION IN HIS PROPOSED AMENDED COMPLAINT WAS OBVIOUSLY FRIVOLOUS AND WITHOUT SUBSTANTIVE MERIT.

Sun filed a motion to amend his complaint and submitted a proposed amended complaint with his motion on December 15, 2011. (Plt.'s Motion to Am. and Proposed Am. Compl.)(R. pp. 81-97). At the hearing on the motion to dismiss held on March 13, 2012, the circuit court considered both Sun's complaint and his proposed amended complaint. The circuit court properly denied Sun's request to amend.

South Carolina Rule of Civil Procedure 15(a) provides, in pertinent part, that "a party may amend his pleading . . . by leave of court . . . and leave shall be freely given when justice so requires and does not prejudice any other party." S.C. R. Civ. Pro. 15(a) (Supp. 2003). The decision of whether to grant a motion to amend is within the discretion of the trial judge. *Stanley*

⁴ The circuit court indicated that it reviewed both the Complaint and proposed Amended Complaint. (Trans. of March 13, 2012 Hearing, p. 71, lines 19-20)(R. p. 71).

v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004). Furthermore, a motion to amend may be denied if it is clear that the proposed amendment is obviously frivolous and without substantive merit. *Collins, et al. v. Sigmon*, 299 S.C. 464, 467, 385 S.E.2d 835, 836, n.1 (1989).

The circuit court denied Sun's motion to amend, as asserted, because the proposed amendment contained only one new substantive allegation, which was patently frivolous. The only distinction between Sun's original Complaint and his proposed amended complaint was the addition of allegations that Matyushevsky and Varg "stole" or conspired with his ex-wife to "cover up" a prenuptial agreement between Sun and Liling. (Proposed Am. Compl., pp. 11-12, ¶ 33-34) (R. pp. 94-95, ¶ 33-34). This claim is patently without merit because, as Sun conceded in his own pleadings and at the motions hearing, the prenuptial agreement was presented to and considered by the family court. (Proposed Am. Compl. ¶ 34; March 13, 2012 Hearing Tran., p. 39, lines 1-24 and p. 48, line 2-p.49, line 25) (R. p. 95, ¶ 34; R. p. 188, lines 1-24 and p. 197, line 2- p. 198, line 25). Thus, the decision to deny Sun's Motion to Amend was proper because the claims relating to Sun's prenuptial agreement were obviously without merit.

III. THERE WAS NO EVIDENCE THAT VARG PERSONALLY PARTICIPATED IN THE ALLEGED BREAK-IN AND CONVERSION OF SUN'S PERSONAL PROPERTY.

In its Order dismissing claims against Matyushevsky and Varg based on the immunity principle set forth in *Gaar v. N. Myrtle Beach Realty Co.*, the circuit court concluded that Sun's allegation that Varg, along with Liling, had committed a break-in and alleged theft of property at the Knowles Island house might state a claim against Varg not barred by the immunity rule.⁵ The circuit court allowed Sun to amend this claim, and Varg subsequently filed a Motion for

⁵ The circuit court determined that Sun had, at a minimum, alleged Varg may have participated in removing items from the Knowles Island house. It was based on this contention alone that the circuit court allowed Sun limited leave to amend his complaint against Varg only. (March 13, 2012 Hearing Tran., p. 44, lines 16-19; p. 75, lines 4-10)(R. p. 193; R. p. 224).

Summary Judgment supported by affidavits from her and Liling, which established that Varg had never been to the house and was not present when Liling admittedly entered the house and removed what she contended were her personal papers.

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court[.]" *Bovain v. Canal Ins.*, 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009). Rule 56(c) of the South Carolina Rules of Civil Procedure provides that judgment shall be rendered when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Smith v. TH Snipes & Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439 (1991). To avoid summary judgment, the non-moving party must submit a scintilla of evidence to demonstrate that there is a genuine issue of material fact. *Hancock v. Mid-South Management Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). However, summary judgment "should be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Bishop for Robertson v. S.C. Dep't of Mental Health*, 323 S.C. 158, 161, 473 S.E.2d 814, 816, (Ct. App. 1996), *affirmed as modified*, *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). The proper purpose of summary judgment is to dispose of cases which do not require a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

The affidavits of Varg and Liling established the undisputed fact that Varg had not personally participated in the alleged break-in and conversion of Sun's personal property. The affidavits confirmed the following: (1) Liling went to the Knowles Island house on September 16, 2010, without Varg; (2) Varg had never physically been on the property or entered the house; (3) Varg did not know that Liling was going to the house until after Liling went to the property and removed certain items, which Liling believed belonged to her; (4) Liling received a call from the Jasper County Sheriff's Office and told the deputy she would have her lawyer call him; and

(5) at Liling's request, Varg called the sheriff's deputy and, based on information from Liling, told the deputy that Liling did have papers from the Knowles Island house. (Affidavits of Liling Sun and Christine Varg) (R. pp. 117-120).

After reviewing the affidavits from Liling and Varg, as well as an affidavit submitted by Sun, the circuit court granted summary judgment for Varg concluding that Sun had no evidence Varg had unlawfully entered the Knowles Island house and that his allegations were "nothing more than mere suspicions backed up by nothing[.]" (July 12, 2012 Hearing Tran., p. 38, lines 20-22) (R. p. 268, lines 20-22). As such, the circuit court properly granted summary judgment for Varg on the only remaining claim against her.

IV. THE CIRCUIT COURT CORRECTLY REFUSED TO CONTINUE THE SUMMARY JUDGMENT HEARING SINCE SUN FAILED TO DEMONSTRATE THAT FURTHER DISCOVERY WAS LIKELY TO UNCOVER ADDITIONAL RELEVANT EVIDENCE CONCERNING VARG'S ROLE IN THE ALLEGED BREAK-IN AND CONVERSION OF SUN'S PERSONAL PROPERTY.

Varg filed her motion for summary judgment on June 5, 2012, and a hearing was scheduled for July 12, 2012. After being notified of the hearing but prior thereto, Sun filed a Motion for Continuance on June 25, 2012, on the basis he had not yet taken the depositions of Varg and Liling. Generally, the party opposing summary judgment should have a full and fair opportunity to conduct discovery before summary judgment is granted. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). "Nonetheless, the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a fishing expedition.'" *Id.*

The circuit court considered Sun's request for a continuance at the July 12 hearing. On close questioning by the circuit court, Sun was unable to state what additional evidence he might uncover which would be relevant to the narrow issue of whether Varg personally participated in

the alleged break-in and conversion. (July 12, 2012 Hearing Tran., p. 12, line 11 – p. 13, line 1) (R. p. 242, line 11-p. 243, line 1).⁶ Therefore, the circuit court correctly concluded that Sun “ha[d] not identified what specific discovery he might conduct . . . other than his desire to depose Varg and Liling and cross-examine them” and that “[t]here [was] no reason to believe that these witnesses [would] recant their prior sworn testimony upon cross-examination.” (Order filed July 18, 2012) (R. pp. 20-23).

The circuit court also denied the Motion for Continuance because Sun had not diligently pursued discovery in the year since the case was filed. (July 12, 2012 Hearing Tran., p. 29, line 9 – p. 33, line 11. and p. 36, line 10 – p. 38, line 8) (R. p. 259, line 9 – p. 263, line 11, and p. 266, line 10 – p. 268, line 8). He had not served any written discovery requests and had not noticed any depositions. (Order filed July 18, 2012, p. 2) (R. pp. 20-23).

The decision to grant or deny a request for continuance rests in the sound discretion of the circuit court and should not be disturbed on appeal absent a showing of a clear abuse of discretion resulting in prejudice to the party seeking the continuance. *See Trotter v. Trane Coal Facility*, 393 S.C. 637, 714 S.E.2d 289 (2011) (affirming refusal to continue workers’ compensation hearing to allow further depositions to be taken). In this case, the circuit court properly exercised its discretion in denying Sun’s request for a continuance of the summary judgment hearing.

CONCLUSION

South Carolina law rightly affords lawyers and their staff immunity from lawsuits by non-clients for actions taken in the performance of their professional activities on behalf of clients. Immunity is particularly important where, as here, the adverse party in a hotly contested

⁶ The circuit court’s original ruling had dismissed under the immunity rule any claims based on allegations Varg and Matyushevsky had coached or advised Liling that she could enter the Knowles Island house and remove property. The only question left was whether Varg had personally participated in the alleged break-in and theft.

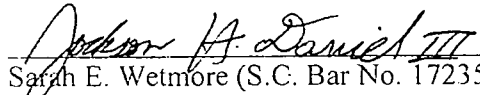
divorce proceeding attempts to sue the opposing attorney and her assistant. The circuit court correctly concluded that, with one narrow exception, all claims against Matyushevsky and Varg (and, vicariously, against CODA) were based on alleged actions taken in the representation of their client.

The circuit court also correctly concluded that there was not a scintilla of evidence to support the remaining claim against Varg and granted summary judgment on that claim. In dismissing these claims, the circuit court also properly exercised its discretion to deny leave to amend the complaint and to refuse to continue the hearing on the motion for summary judgment.

Therefore, Matyushevsky, CODA and Varg respectfully request that the Court of Appeals affirm the April 6, 2012 and July 18, 2012 orders of the circuit court in all respects.

April 30, 2014

Respectfully submitted,


Sarah E. Wetmore (S.C. Bar No. 17235)
Jackson H. Daniel III (S.C. Bar No. 70308)
CARLOCK COPELAND & STAIR, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
Telephone: (843) 727-0307

-and-

Charles J. Baker III (S.C. Bar No. 486)
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
5 Exchange Street
Post Office Box 999
Charleston, SC 29402-0999
Telephone: (843) 722-3400
Attorneys for Respondents Olesya Matyushevsky,
Citizens Opposed to Domestic Abuse and Christine Varg

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
Marvin H. Dukes, III, Master-In-Equity

Appellate Case No. 2011-204367
Common Pleas Case No. 2011-CP-07-2546

Joseph C. Sun, *Pro se*,

Appellant,

v.

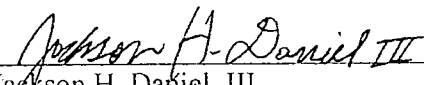
Olesya Matyushevsky,
Citizens Opposed to Domestic Abuse,
Christine Varg and Liling Sun,

Respondents.

PROOF OF SERVICE

I certify that I have served **FINAL BRIEF OF RESPONDENTS OLESYA MATYUSHEVSKY, CITIZENS OPPOSED TO DOMESTIC ABUSE AND CHRISTINE VARG** upon the parties below by depositing a copy of it in the United States Mail, postage prepaid, on April 30, 2014, addressed as follows:

Joseph C. Sun, P.O. Box 151, Bluffton, SC 29910
J. Sam Scoville, Esq., Harvey & Battey, P.A., P.O. Drawer 1107, Beaufort, SC 29901


Jackson H. Daniel, III
CARLOCK COPELAND & STAIR, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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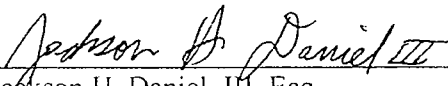
Olesya Matyushevsky,
Citizens Opposed to Domestic Abuse,
Christine Varg and Liling Sun,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

April 30, 2014


Jackson H. Daniel, III, Esq.
CARLOCK COPELAND & STAIR, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307

Attorney for Respondents Olesya Matyushevsky, Citizens
Opposed to Domestic Abuse and Christine Varg

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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**OLESYA MATYUSHEVSKY, CITIZENS
OPPOSING DOMESTIC ABUSE, CHRISTINE
VARG and LILING SUN Respondents**

v.

JOSEPH C. SUN Appellant

AMENDED REPLY BRIEF OF APPELLANT

**JOSEPH C. SUN, Appellant pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963**

**J. Sam Scoville, Esq.
P.O. Drawer 1107
Beaufort, SC 29901**

**Jackson H. Daniel, III, Esq.
40 Calhoun Street, Suite 400
Charleston, SC 29401**

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<u>Cunningham v. Anderson County</u> , 402 S.C. 434, 741 S.E. 2d 545 (2013).	*****	7,8

ARGUMENT

In his original complaint, Appellant alleges that all defendants used the pretense of domestic abuse and conspired in a scheme of coverup of Respondent LiLing Sun's (hereinafter LiLing) bad acts and defrauding money and property from Appellant (page 4, complaint). Respondents' fraud included, but not limited to, knowingly and intentionally employed a wrong Certified Receipt at the temporary hearing to mislead the Beaufort Family Court Judge in believing Service of the Notice of hearing was adequate when in fact Appellant was actually served only a day before the hearing in violation of Family Court Rule. Then Respondents LiLing and Matyushesky presented an out of date Warranty Deed on the marital home which deed was altered by Respondent LiLing in 2009 prior to the revelation of her adultery and filing of divorce.

Whether the temporary order issued in June 2009 was correctable at the Family Court is not an issue here, as Family Court has no jurisdiction to award damages which is what Appellant is suing these Respondents for. Subject matter jurisdiction on Appellant's claim lies solely in the Circuit Court. (See Thompson v. Ballentine, 298 S.C. 289, 379 S.E.2d 896 (1989) .) Appellant alleges damages he suffered in legal expenses he had to pay and temporary living expenses which was caused by Respondents' fraud.

Circuit Court Order of November 8, 2011 (R.p.14) is erroneous. Not only Respondent LiLing has not shown any of her bad acts causing Appellant damages and injury "were part of the marital allegation", Respondent LiLing has not shown that "there was another action pending between these parties for the same claims". It is the burden of the movant to show why she is entitled to relief. Even assuming those claims "pre-date" the Family Court's divorce order (R.p.11, line 13,14 and R.p.40-59), the Family Court has no jurisdiction to award damages. Thompson v.

Ballentine, supra.

The South Carolina Supreme Court in Brazell v. Windsor, 384 S.C. 512, 682 S.E.2d 824 (2009) held that,

“Under Rule 12(b)(6), a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Id.*”

All Respondents have not negated any claims made by the Appellant when Appellant’s complaint and Amended Complaint are viewed in the light and construed most favorable to Appellant. By burglarizing Appellant’s home in Jasper County, a separate house from the marital home, both titled in the name of Appellant’s mother, during the period when Appellant was in jail caused by Respondents false and malicious charges, all defendants conspired to destroy and steal numerous valuables and documents including car titles, warranty deeds and the original prenuptial agreement, these defendants fraudulently converted the marital home in Beaufort County and the house in Jasper County from non-marital property to marital property, thereby they could “negotiate” a settlement with Appellant’s mother when Appellant was in jail.

In a similar case, the South Carolina Supreme Court in Gilley v. Gilley, 327 S.C. 8, 488 S.E.2d 310 (1997) held that,

“Family Court lacked jurisdiction over husband’s action against wife for order of separate maintenance requiring parties to live separate and apart, equitable distribution of personal property, and attorney fees, where prenuptial agreement provided that neither party could claim alimony or separate maintenance, and that property acquired by parties during marriage or owned at time of marriage would not be the subject of any claims for equitable apportionment.

Code 1976, §§ 20-7-420(2), 20-7-473"

Therefore, Circuit court had subject matter jurisdiction over the terms of the prenuptial agreement a copy of which was presented to the Family Court at the temporary hearing even though the original was subsequently stolen by the Respondents in their conspired burglary of Appellant's home.

Respondent LiLing's fabrication of false charges causing Appellant to be repeatedly arrested and incarcerated in 2010 had not been tried when this case was filed on June 15, 2011, therefore, Appellant had not alleged the proceedings were terminated in his favor. However, when Appellant filed his proposed Amended Complaint on December 15, 2011, several charges were already dismissed or acquitted. Appellant has not made any claim for damages in his complaint against Respondent LiLing regarding false arrest and malicious prosecution because at the time of the filing of complaint, the cause of action had not accrued. He is entitled to file a supplement to his complaint or bring a new action to claim for recovery on his damages and injury now.

The Supreme Court of South Carolina, in Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999) held that,

"Under Rule 12(b)(6), SCRPC, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. Stiles v. Onorato, 318 S.C. 297, 457 S.E.2d 601 (1995). The 12(b)(6) motion may not be sustained if the facts alleged and inferences therefrom would entitle the plaintiff to any relief on any theory. *Id.*

Rule 12(b) further provides:

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made

pertinent to such a motion by Rule 56.

Rule 12(b), SCRCP (emphasis added). We have interpreted this language as meaning "the trial court may treat a 12(b)(6) motion as a motion for summary judgment and consider matters presented outside the pleadings if the parties are afforded a reasonable opportunity to respond to such matters in accordance with Rule 56(c) and (e) of the South Carolina Rules of Civil Procedure. The notice provisions in Rule 56 are incorporated into Rule 12(b)(6)." *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698-99 (1987); see also *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995). In *Brown*, we found the trial court had not given notice to the parties that it was going to consider the affidavits and hear the 12(b)(6) motion as a motion for summary judgment. Thus, the supporting affidavits in *Brown* were improperly considered by the trial court in ruling on the 12(b)(6) motion."

At the commencement of the hearing on October 19, 2011, Respondent LiLing presented three (3) sets of documents "outside the pleadings" and asked the circuit to take "judicial notice". Not only those documents were not well known established matters proper for Judicial Notice and they were not properly admitted into evidence pursuant to South Carolina Rules of Evidence. None of the documents were certified and Appellant was not allowed to object or even read the documents prior to the adjournment of the hearing which lasted less than 15 minutes. South Carolina Code § 19-3-150 regarding Judicial Notice requires that "to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise."

Furthermore, § 40-47-119 regarding Judicial Notice provides that,

"Information to be exchanged before hearing; admissibility; identification of relevant portions of information.

(A) Before the hearing the parties shall exchange:

- (1) a final list of witnesses the party reasonably expects to testify at the hearing;
- (2) a final list of all exhibits expected to be offered at the hearing, including a written report or summary from each expert witness expected to testify;
- (3) a final list of all facts that the party intends to request be judicially noticed and the information supporting the judicial notice of the facts requested.

Respondent LiLing's counsel simply handed Appellant the thick stack of document at the

hearing as his "Judicial Notice" is improper and in violation of the law. Therefore, Respondent LiLing's three (3) exhibits presented at the hearing can be at best be considered as "matters outside of pleading" as allowed in SCRCF, Rule 12(b)(6). Respondents motion to dismiss should be converted to one for summary judgment by the circuit court. Appellant should be given his opportunity to respond pursuant to Rule 56(c) and (e).

Summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. Rules Civ. Proc., Rule 56. Cunningham v. Anderson County, 402 S.C. 434, 741 S.E.2d 545 (2013).

Appellant's proposed Amended Complaint alleges several causes of action against all the defendants of fraud, trespass, adultery, theft, burglary, conspiracy, wrongful arrest and malicious prosecution, libel and slander, all of which were recognized by circuit court in its order of November 8, 2011. However, the circuit court committed reversible error in finding that those claims were within the exclusive jurisdiction of the family court.

In Appellant's Amended Complaint, he alleges all the aforesaid wrongful acts committed by all the defendants in conspiracy with Respondent LiLing. As there was no evidence of any abuse as falsely alleged by Respondent LiLing in her Initial Brief, Respondents Matyushesky and CODA had to make false allegations just so they could represent LiLing. Respondent Matyushesky was using Respondent LiLing and her divorce proceeding to commit all the wrongful acts against Appellant as her personal retaliation and vendetta in return of Appellant's bar complaint against her and to further the scheme of extortion against Appellant's 90 year old mother in Canada. They had to put Appellant in jail to accomplish that. Her libel and slander outside of court room of numerous fabricated and false accusations of crimes and bad acts she claimed

committed by Appellant Sun was an act not in the process of representation.

Finally, Respondent Varg claimed knowledge of LiLing's burglary and the valuables stolen in the Report written by the Jasper County Sheriff and attached in Respondent LiLing's so-called "Judicial Notice" Exhibit B at the hearing on October 19, 2011. (R.p.108-114) Appellant was not allowed any discovery on Varg who simply filed an affidavit and claimed she did not participate in the burglary and obtained summary judgment. Deposition of Varg could exposed that she had made false statement in her affidavit or that she was involved in the burglary some other way.

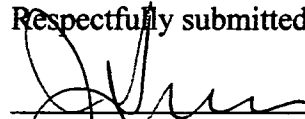
Therefore, a summary judgment in her favor without allowing discovery was a reversible error. Cunningham v. Anderson County, supra. During the hearing on March 13, 2012, Appellant presented in court his letters written to Respondent counsel Baker of his intent to take Varg's deposition. (R.pp.236,255) Counsel Baker responded by the delay tactic by proposing to have the deposition after ruling on the motion to dismiss. Appellant made the objection on the disallowance of discovery at the hearing. (R.pp.257-268) Master in Equity Marvin Dukes, III overruled Appellant and granted Respondent Varg's motion for summary judgment.

CONCLUSION

For the foregoing reasons, the Circuit Court Orders of November 9, 2011, April 6, 2012 and July 18, 2012 should all be reversed.

This 19th day of July, 2014.

Respectfully submitted,

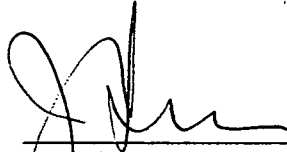


JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

PROOF OF SERVICE

I certify that I have this date served the Amended Reply Brief of Appellant on all Respondents by depositing a copy of same in the U.S. Mail postage prepaid, on July 19, 2014, addressed to their attorneys on record as follows:

J. Sam Scoville, Esq. P.O. Drawer 1107, Beaufort, SC 29901
Jackson H. Daniel, III, Esq. 40 Calhoun Street, Suite 400, Charleston, SC 29401

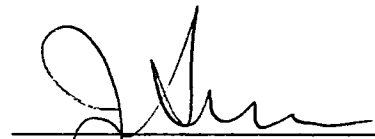


Joseph C. Sun
P. O. Box 151
Bluffton, SC 29910

CERTIFICATE OF COUNSEL

The undersigned certified that this Amended Reply Brief complies with Rule 211(b), SCACR.

July 19, 2014



JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963