

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

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Case Nos. 2013-CP-40-6571 & 2014-CP-40-4165  
Appellate Case No. 2015-000195

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**RECEIVED**

JUN 17 2015

SC Court of Appeals

Ashely S. Griffith..... Appellant,

v.

Pathology Service Associates, LLC n/k/a  
PST Services, Inc..... Defendant,

with

Pathology Service Associates, LLC as the ..... Respondent.

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**INITIAL BRIEF OF APPELLANT**

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June 15, 2015

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## STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err by permitting a non-juridical entity other than the judgment debtor to contest a judgment against a third party?
- II. Did the Circuit Court err by refusing to permit plaintiff, a judgment creditor holding a substantial default judgment, to engage in discovery as to factually disputed issues raised in connection with efforts by an adverse party to set aside the default judgment?

## STATEMENT OF THE CASE

This appeal arises out of two civil actions filed in Richland County. The first was filed on October 28, 2013 by Plaintiff-Appellant, Civil Action Number 2013-CP-40-6571. The second was filed on June 30, 2014 by Plaintiff-Appellant, Civil Action Number 2014-CP-40-4165. The first resulted in a default judgment against an entity described as "PST Services, Inc. f/k/a Pathology Service Associates, LLC." The second resulted in a default against an entity that Plaintiff-Appellant contends is the same entity.

On August 12, 2014, an entity appeared and filed a motion to set aside the default judgment in Griffith I and the default in Griffith II. As explained below, the parties contest whether that entity is the judgment debtor in Griffith I and the defendant in Griffith II. The Richland County Circuit Court permitted the entity to proceed with the motions and ruled in favor of the entity that challenged the default judgment in Griffith I and default in Griffith II by orders dated December 18, 2014.

## ARGUMENT

**1. The Circuit Court erred by permitting a non-judicial entity other than the judgment debtor to contest a judgment against the actual judgment debtor.**

On June 20, 2014, the Richland County Court of Common Pleas entered a default judgment against an entity designated as “PST Services, Inc. f/k/a Pathology Service Associates, LLC.” See Form 4 at 1. On August 12, 2014, a different entity appeared and moved to set aside the default judgment. See generally Motion to Set Aside Default Judgment.

The entity that appeared and moved to set the judgment aside is a non-judicial entity formerly known as Pathology Service Associates, LLC. This entity is **not** “PST Services, Inc. f/k/a Pathology Service Associates, LLC,” and is therefore not the judgment debtor in Griffith I, nor is it the defendant in Griffith II. In fact, by its own admission, this entity is a non-judicial entity. See Motion for Stay of Enforcement of Judgment dated September 26, 2014.

Appellant stipulated and argued to the Circuit Court that the entity that appeared seeking to set aside the default judgment in Griffith I was not a party to the judgment. Appellant further stipulated and argued to the Circuit Court that the entity that appeared seeking to set aside the default in Griffith II was not a party to that action. Despite this, the Circuit Court entertained the motions to set aside the default judgment in Griffith I and the default in Griffith II, even though these motions were made on behalf of an entity that was not a party to either action and was not bound by the judgment in Griffith I. See Plaintiff’s Omnibus Memorandum at 3-11.

The Circuit Court incorrectly disregarded Appellant’s arguments that the entity that appeared to challenge the default judgment and default was the incorrect entity and

entered an order setting aside the default judgment in Griffith I and default in Griffith II. This is obvious error that must be overturned on appeal. The entity that appeared in these cases has no standing whatsoever to challenge the default judgment in Griffith I, nor does it have standing to challenge the default in Griffith II. It is a non-judicial entity and is different from the judgment debtor in Griffith I and the defendant in Griffith II. For ease of reference, from here forward, Appellant will be referred to as “Plaintiff” and Respondent will be referred to as “Movant.”

Plaintiff has never taken the position that Movant is the Judgment Debtor in Griffith I or the Defendant in Griffith II and never will. Plaintiff has stipulated to that fact, and this stipulation moots the Rule 60(b) and Rule 55(c) motions per Rule 41(a)(1), SCRCF. See Stipulation of Dismissal.

By its own admission, Movant is not a judicial entity. Movant first disclosed this as part of a Rule 62(b) motion made on September 16, 2014. See Rule 62(b) Motion. Per McCullar v. Estate of Campbell, Movant’s Rule 60(b) and Rule 55(c) motions (along with everything else Movant has filed) are nullities. Id. at 207, 672 S.E.2d at 785. Movant filed a Rule 62(b) motion stating that Movant was “a dissolved company that is no longer in existence.” In the same motion, Movant admitted that “At the time of filing and service . . . [Movant] was dissolved and terminated.” Griffith 0435. Therefore, neither motion was properly before the Circuit Court. Id. at 208 n.5, 672 S.E.2d at 785 n.5.

The McCullar case could not be clearer. Everything filed in such a situation is a nullity. This defect is even more fundamental than subject matter jurisdiction:

It is true that whether a party is a “real party in interest” is not a matter of subject matter jurisdiction, nor is the issue of a party’s capacity to sue. What is at issue here, however, is not capacity, standing, or party in interest, but something much more fundamental: whether, at the time the

suit was purportedly commenced, there existed a juridical entity known as “Estate of Dr. William Cox Campbell.” Since it is undisputed that Dr. Campbell’s Estate was closed months before this action was allegedly commenced by the then pro se respondents, the answer is “no.”

McCullar at 207, 672 S.E.2d at 784-85 (2009).

This case is logically identical to McCullar. The only difference is that in McCullar, plaintiffs sued a closed estate. Here, lawyers filed papers on behalf of a terminated company. That is a distinction without a difference. If papers filed against a non-existent entity are a nullity, papers filed on behalf of a non-existent entity certainly are too. Only juridical entities can be parties to lawsuits per McCullar.

A non-existent entity has no standing to file papers of any kind in court. A lack of standing means there is no case or controversy before the court. This deprives the court of subject matter jurisdiction, as courts only have jurisdiction to hear actual cases and controversies. Bardoon Properties, NV v. Eidolon Corp., 326 S.C. 166, 485 S.E.2d 371 (1997). Simply put, Plaintiff has no quarrel with Movant and has stipulated that Movant is a defendant in any action Plaintiff has brought.

Beyond that, as an entity with no assets and no ability to obtain assets, even if Movant did exist in some zombie-like fashion, it still would not have standing to contest a money judgment entered against it or a different entity. It has no assets to collect from and never will. That means there is no standing, which means there is no case or controversy, which means there is no subject matter jurisdiction over a dispute between Movant and Plaintiff—the resolution of the controversy is entirely academic.

Movant—the Respondent in this appeal—is not the Griffith I Judgment Debtor. The Griffith I Judgment Debtor is referred to in the judgment as “PST Services, Inc. f/k/a Pathology Service Associates, LLC” and as “Pathology Service Associates, LLC n/k/a

PST Services, Inc.” See Form 4. That is not Movant. Movant was named “Pathology Service Associates, LLC” until failing to survive a merger with PST Services, Inc. on December 31, 2013. The LLC itself was terminated on January 21, 2014.

Since that time, Movant is best described as “a terminated LLC formerly known as Pathology Service Associates, LLC” since the merger survivor inherited everything from Pathology Service Associates, LLC, including the right to use the name. See S.C. Code § 33-4-101(d)(1) (“A corporation may use the name (including the fictitious name) of another domestic or foreign corporation . . . if the . . . proposed user corporation . . . has merged with the other corporation[.]”)

At no point in time has Movant had “PST Services, Inc.” in its name. It is definitely not “PST Services, Inc. f/k/a Pathology Service Associates, LLC.” And Movant has never changed its name to PST Services, Inc., so it is definitely not “Pathology Service Associates, LLC n/k/a PST Services, Inc.” Those are obviously references to the merger survivor, and Movant is the merger non-survivor.

Moreover, the Griffith I Judgment makes clear reference to the fact that the Judgment Debtor is the merger survivor, because it explains that “During the pendency of the litigation, Pathology Service Associates, LLC changed its name to PST Services, Inc.” This is an obvious reference to the merger survivor, not the merger non-survivor.

The Griffith II Defendant is defined as being the Griffith I Judgment Debtor. The Griffith II Summons states that the Griffith II Defendant is fully described in the Griffith II Complaint, and the Griffith II Complaint defines the Griffith II Defendant “a business and the same Defendant against whom judgment was granted in Griffith v. Pathology Service Associates, LLC, No. 2013-CP-40-6571.” Obviously, the Griffith II Defendant

cannot be Movant because Movant is not the Judgment Debtor in Griffith I, nor is Movant a business—it is a terminated company.

The Griffith II Complaint goes on to describe the Defendant as “a sophisticated, highly solvent judgment debtor who could easily pay or make reasonable arrangements to pay this judgment without hardship,” which is hardly a description that fits Movant, an insolvent terminated company. The Griffith II Complaint further states that Defendant “is using the judgment proceeds to advance Defendant’s business interests, the same business interests which were advanced by the unfair trade practices in the first place.” Griffith 0180. Obviously, Movant is not using any proceeds to advance any business interests, nor is Movant liable for the unfair trade practices against Plaintiff that led to the Griffith I Judgment in the first place. PST Services, Inc. is the entity that is using the judgment proceeds right now, not Movant.

Because Movant is not the Griffith I Judgment Debtor or the Griffith II Defendant, or a successor in interest, Movant cannot appear in this action and challenge the default judgment in Griffith I or the default in Griffith II.

**2. The Circuit Court erred by failing to permit discovery on the identity of the judgment debtor.**

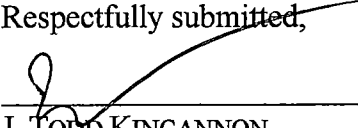
In Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 721 S.E.2d 430 (2012), the Supreme Court held that a default judgment creditor has the right to discovery with regard to motions to set aside default when factual questions surround the motion to set aside default. Plaintiff submits that in this case, Plaintiff had the right to conduct discovery regarding the corporate identity of the judgment debtor and the Movant to establish the facts of the situation. Plaintiff was denied that opportunity by the trial court, and even if this Court does not reverse on the grounds that the Movant is not the

judgment debtor, this Court should reverse and remand for discovery on the question of corporate identity with instructions to the trial court to prohibit any entity that is not the judgment debtor or a proper successor in interest from challenging the default judgment in Griffith I or the default in Griffith II.

### CONCLUSION

Appellants respectfully request this Honorable Court reverse the trial court's order setting aside the default judgment in Griffith I and the default in Griffith II and remand the case for further proceedings as appropriate. In the event the proper judgment debtor in Griffith I and the defendant in Griffith II appear and seek to set aside the default judgment and default, respectively, the Circuit Court should handle those motions as appropriate.

Respectfully submitted,



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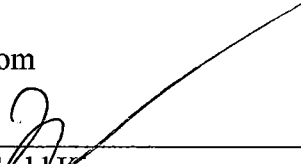
Pathology Service Associates, LLC as the .....Respondent.

**CERTIFICATE OF SERVICE**

I, the undersigned employee of The Kincannon Firm, certify that I have on the date below indicated served Respondent in this matter with the foregoing Appellant's Initial Brief and Designation of Matter and Motion for Extension together with this Certificate of Filing and Service by hand delivery by and through Respondent's counsel of record:

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June 15, 2015

  
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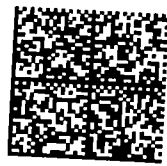
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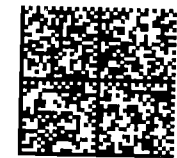
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