

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

J. Gregory Hembree, Solicitor)
Fifteenth Judicial Circuit,)
On Behalf of The Myrtle Beach)
Police Department,)

Plaintiff,)

vs.)

Six Hundred Thirty Dollars (\$630.00))

Defendant Property,)

Raymond Edward Chestnut,)

Defendant.)

) IN THE COURT OF COMMON PLEAS

) FIFTEENTH JUDICIAL CIRCUIT

) C/A No. 2004-CP-26-5638

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JUL 14 2015

SC Court of Appeals

**ORDER DENYING DEFENDANT'S
MOTION TO SET ASIDE PRIOR
ORDER AND CONFIRMATION
OF ORDER OF FORFEITURE**

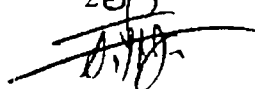
This matter is before the Court upon Defendant and/or interested party, Raymond Edward Chestnut's letter and attachments dated February 23, 2015 and filed by the Clerk of Court on March 3, 2015, to the undersigned, which was reviewed and considered as a motion to set aside the prior Order of Forfeiture dated November 23, 2004. A Reply in Opposition was filed on March 30, 2015. The Defendant filed a Response on April 10, 2015 and a Second Response on May 6, 2015. After consideration of the filings and based upon the matters on file with the Clerk of Court, and all the memoranda and arguments contained therein, I make the following findings of fact and conclusions of law:

An Order of Forfeiture, which was a Final Order, was entered in this case on November 23, 2004, wherein a forfeiture of the Defendant Property was granted to the Plaintiff based upon a default judgment against Defendant, Raymond Edward Chestnut. Once a final order or judgment has been entered, the procedures for seeking relief from the judgment or order are set

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forth in Rule 60(b), S.C.R.C.P. Rule 60 provides that a motion for relief "shall be made within a reasonable time," and if the motion is based upon "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time for a new trial under Rule 59(b); [or] (3) fraud, misrepresentation or other misconduct of an adverse party," the motion for relief must be made not more than one year after the judgment. Rule 60(b), S.C.R.C.P. To the extent Defendant Chestnut seeks relief based upon Rule 60(b)(1-3), his motion is denied as he has sought relief over 10 years after the entry of the Order of Forfeiture. Any relief from a final Order based upon the grounds set forth in Rule 60(b)(4-5), S.C.R.C.P. must be sought within a reasonable time. Id.

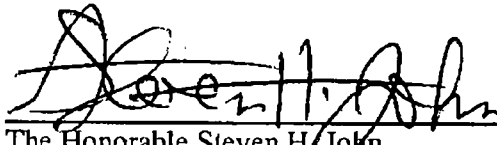
Defendant has allowed 10 years to elapse before seeking any relief to have the Order of Forfeiture set aside and was, therefore, not made within a reasonable time. While Defendant Chestnut asserts that he was not personally served with the Summons and Complaint in the foregoing matter, I find that this argument to be unpersuasive. An Affidavit of Service was completed by a Deputy Sheriff for this county wherein personal service was made of the Summons and Complaint on October 19, 2004. Additionally, on March 30, 2012, Defendant Chestnut filed a Complaint in the U.S. District Court for South Carolina wherein he sought to litigate the issues of whether he was served with the Summons and Complaint for the forfeiture and the service of the same on October 19, 2004. Even assuming for purposes of arguendo, that Defendant Chestnut was not properly served in this matter in 2004, his own pleadings evidence that he was aware of the Order of Forfeiture on March 30, 2012. However, Defendant Chestnut did not seek relief from this Court's Order of Forfeiture until February 23, 2015, over two years and 11 months after he sought relief in the Federal Courts.

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I find that a delay in seeking relief from the Order of Forfeiture by waiting more than 10 years after the entry of said Order, or almost three years after seeking relief from the Order through the Federal Courts before seeking relief from this Court, is an unreasonable delay and does not entitle the Defendant to the relief sought pursuant to Rule 60, S.C.R.C.P. Therefore,

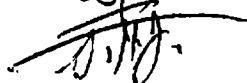
IT IS ORDERED ADJUDGED AND DECREED that Defendant, Raymond Edward Chestnut's Motion to Set Aside the Order of Forfeiture is DENIED, and the Order of Forfeiture entered on November 23, 2004 is CONFIRMED.

IT IS SO ORDERED.



The Honorable Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

June 3, 2015
Conway, South Carolina

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Reply to:

Myrtle Beach

dinabnit@richardsonplowden.com

Direct Dial: 843-443-3583

July 10, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

The Honorable Melanie Huggins-Ward
Horry County Clerk of Court
Post Office Box 677
Conway, SC 29528-0677

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SC Court of Appeals

Re: J. Gregory Hembree, Solicitor, on behalf of Myrtle Beach Police Department,
Respondent v. Six Hundred Thirty Dollars (\$630.00), Defendant's Property,
Raymond Chestnut, Appellant
C/A No.: 2004-CP-26-5638
Appellate Court Case No. 2015-001121
RPR File No.: 8401-009

Dear Ms. Kitchings and Ms. Huggins-Ward:

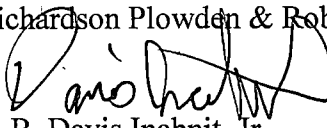
We are in receipt of the documents which appear to be a Motion for Reconsideration in the above-referenced Appellate Court case and a Motion Pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure for the above referenced Circuit Court case. While we do not believe a response is necessary on behalf of the Solicitor's Office, out of an abundance of caution, and to the extent you may later request the same, I have attached a copy of the most recent Order dated June 3, 2015 from the Honorable Steven H. John entitled Order Denying Defendant's Motion to Set Aside Prior Order and Confirmation of Order of Forfeiture. Based upon Judge John's Order, it is our position that neither Motion is appropriate and, therefore, should be summarily dismissed.

If you should have any questions or request additional information or a further response to the same, please feel free to contact me.

The Honorable Melanie-Huggins Ward
July 10, 2015
Page 2

Yours very truly,

Richardson Plowden & Robinson, P.A.



E. B. Davis Inabnit, Jr.

EBDI/gh
Enclosure

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