

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal From The Richland County  
Court of Common Pleas From Orders of  
Honorable G. Thomas Cooper, Jr.,  
Fifth Judicial Circuit Court Judge

Appellate Case No.: 2015-000740

Case No.(s): 2013-CP-40-03078  
2007-CP-40-03742

Subsequent Interlocutory Orders of (Former) Circuit Court Judge,  
Honorable J. Michelle Childs:

Case No.(s): 2007-CP-40-03742  
2009-CP-40-02442

Subsequent Interlocutory Order of Circuit Court Judge,  
Honorable De Andrea Gist Benjamin:

Case No.: 2009-CP-40-02442

Clarence S. Gregory, . . . . . Appellant,

Verses

Riley Pope & Laney, LLC, Law Firm, Attorney(s) and Counselor(s)  
at Law; Individually and Individually named; Theodore D. Riley,  
T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, Of Whom  
All are sued In Their Individual and Professional Capacities,  
Riley Pope & Laney, Limited Liability Contractor(s)(LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named  
Of Who, Formerly Employed with Riley Pope & Laney, LLC, Law  
Firm, An Agent Attorney Is Sued In His Individual and  
Professional Capacities, Et Al., All Whom are named as

Defendants,

Of which, Riley Pope & Laney, LLC, Is The Respondent.

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REPLY BRIEF OF APPELLANT

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Clarence S. Gregory  
Appellant

Broad River Correctional  
Murray Unit, B-Wing Rm.  
#234, 4460 Broad River  
Road, Columbia, S.C.  
Zip Code 29210-4012

Pro'se Appellant

Damon C. Wlodarczyk, Esquire  
For Respondent

Riley Pope & Laney, LLC  
Attorneys And Counselors  
at Law, 2838 Devine Street  
Post Office Box 11412  
Columbia, S.C. 29211-1412

Respondent

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STATEMENT OF ISSUES ON APPEAL

I.

"Whether The Presiding Judge "Erred" In His Findings In, Time Barring Appellants' Claims Or Causes Of Action, Under The Statutory Of Limitation, When Appellant Filed Notice And Motion Under The Doctrine Of Equitable Tolling And Equitable Estoppel?"

II.

"Whether The Presiding Judge "Erred" In Denying And Not Permitting Appellant, By Motion For Leave To Amend His Complaint Before Defendants' Were Served, Appellants' Summons and Complaint?"

III.

"Whether The First Two (2), Original Prior Unappealed Orders Are Binding Upon Respondents' In Subsequent Motion Proceedings, Under Doctrine Of The Law Of Case, As A Result For The Lack Of Jurisdiction?"

IV.

"Whether One (1) Circuit Court Judge Has The Power, Authority, Jurisdiction To Review, Modify, Reverse Or Overrule The Findings Of Another Circuit Court Judge, Involving The Same Stated Facts, Issues, Defense Or The Same Subject Matter, In The Same Action?"

V.

Whether The Presiding Judge "Erred" In His Findings, In Raising "Case Law," Dorrell verses South Carolina Department Of Transportation, Absent From Implied-Consent Pleadings, Which Was Not Before Him, And Plead, "Case Law," Hill verses York County Sheriff's Department, Was Implied-Consent Before The Court?"

STATEMENT OF ISSUES ON APPEAL, CONTINUED,

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VII.

"Whether The Respondents' Action In Both Cases, In 2007-CP-40-03742, And In, 2009-CP-40-02442, Pleading The Same Stated Facts, Issues, Defenses, And Arguments In A Subsequent Proceeding In The Same Action, "Gave Rise" To Causes Of Action Of "Abuse Of Legal Process?"

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"Whether The Respondents' Had A Duty To Disclose The Material Facts To The Subsequent Court, Those Facts That Previous "Existed" On The Clerk Of Courts' Record, And Whether The Respondents' Acted In "Bad-Faiths," For Failure To Disclose Those Facts To The Subsequent Courts, Before Those Two (2) Courts Made Its' Determination, Which Resulted To The "Outcome" Of The Proceeding?"

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X.

"Whether The Presiding Judge "Erred" In His Findings By Dismissing With Prejudice Appellant's Claims Or Causes Of Action Of Unclean-Hands?"

STATEMENT OF ISSUES ON APPEAL, CONT'D,

XI.

"Whether The Presiding Judge "Erred" In His Findings  
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FACTS

Respondents' Counsel Statement of The Case

In the Respondents' counsel Statement of the Case, Page 02, Thru Page 03, Paragraph(s) 01 and 02, the Appellant agrees with the Respondents' Statement of The Case;

Respondents' Counsel Statement of The Facts

Respondents' did not clarify in brief on, Paragraph A., of their "facts" relative to Case No.: 2007-CP-40-03742, on lines 04-07, as Respondents' alleged in pertinent parts:

Held: "Specifically, that defendants allegedly installed a faulty steel-caged door with a one way egress into the Lieber Correctional Institution cafeteria tray room entrance area, which due to the alleged improperly installed caused injuries to his left three fingers; (See, Respondents' Initial Brief).

Appellant Opposed in clarity in Appellant's Statement of the Facts (Case No.: 2007-CP-40-03742), provided in Complaint Case No.: 2013-CP-40-03078, Page 73, Paragraph(s) 19 thru 22, that, Defendants, SCDC was put on prior notice of the trayroom door hinges conditions, on/or about, January 2005, thru March 15, 2005, before Appellant sustained injuries to his left hand and three (3) fingers; (See, ROA p. 493 thru 499);

Respondents' misled the Court in their Paragraph 01, on Page 04, Statement of Facts, which provided in pertinent parts:

Held: "RPL answered Gregory's Complaint on September 06, 2007, and filed a Notice and Motion for Summary Judgment on October 30, 2007, which was "unsupported by affidavits" and "relied" solely on the facts pleaded in the Complaint; (See, Respondents' Initial Brief);

The facts shows and demonstrated that Defendants' counsel and currently Respondent LeRoy Free Lahey, on/or about, October 26, 2007, filed with their summary judgment motion an "affidavit" of Lieutenant Morris Elmore, an Lieber Correctional Facility, Environmental Health and Safety Officer (ESHO); (See, Appellant's ROA p. 500-501, Dated October 01, 2007);

Respondents' counsel allegations of Statement of Facts, Page 04, Paragraph 01, lines 02-03, are without "merits;"

Respondents' counsel in their Statement of the Facts on Page 04, Pargraph 02, provides in pertinent parts:

Held: "On March 26, 2008, this Court issued an Order finding "there were issues of fact to be resolved at trial and, therefore, summary judgment was denied; (See, Respondents' counsel Initial Brief);

Appellant avers, that Respondents' counsel failed to make mention that they (Defendants' counsel Heath M. Stewart, III) did "not" file motion to amend/ or reconsider, Rule 59 (e), SCRCF, nor did Respondents' counsel make any mention that Defendants' counsel Stewart, III, did "not" appeal the presid-  
-ing Honorable G. Thomas Cooper, Jr., March 26, 2008, Order, which Order did determined the merits of the issues of the causes of actions, by the "submissions of both parties".  
(See, First Original Order of Judge G. Thomas Cooper, Jr., Dated Marc 26, 2008, Appellant's ROA p. 63, p. 64, p. 65);

Respondents' counsel did not clarify in their brief the specific facts, in their (Respondents' Brief, Statement of The Facts) Page 04, B Facts Relative to Case No.: 2009-CP-40-02442, Paragraph 01, lines 03-05, provided in pertinent parts:

Held: "Specifically, that defendants were responsible for Plaintiff being injured while in the institution's cafeteria;" (See, Respondents' Counsel Initial Brief);

Appellant avers in his Complaint in Appellant's ROA p. 80, ¶ 52, 53, 54, which provided in pertinent parts:

Held: "That, on/or about, May 21, 2008, Plaintiff was given a direct order by the on duty FoodService Supervisor; "That, as a result, Plaintiff refused to hurry, to wash-out the trash-barrels, and while Plaintiff was leaning over the barrels washing them out, said Food-Service Staff, Supervisor (Jennifer Butler) struck Plaintiff "twice" in his back with a stainless steel, serving spoon; (See, Appellant's ROA p. 184, ¶ 08, 09, and ¶ 10, of Volume II., Volume III., p. 455 thru 457, and p. 458 thru 465);

Respondents' counsel did not clarify in their Initial Brief, Statement of The Facts, Page 04, of last two (2) lines, and Page 05, line 01, which provided in pertinent parts:

Held: "Following a hearing on January 14, 2010, Judge Childs issued an Order finding there were "geniune issues of fact" and denying summary judgment. The Order was filed on April 05, 2010; (See, Repondent's Counsel Initial Brief);

Appellant avers, that the Respondents' counsel did "not" make any mention or disclose to this Court that they (Defendants' Counsel Heath M. Stewart, III), after receiving a filed copy of the written Order, dated on/or about, April 05, 2010, in the Original Case of 2009-CP-40-02442, Respondents' did not file motion to amend/or reconsider, under Rule 59 (e), SCRPC, nor made any attempts to "appeal" the (former) presiding Circuit Court's Order;

Appellant avers and clarify the Respondent's counsel allegations pled in their Paragraph C., of Allegations As To RPL, Page 05, lines 01 and 02, which provided in pertinent parts:

Held: "The crux of the allegations relate to Inmate's assertion that "it was improper" for RPL (Riley Pope & Laney, LLC), to file a second summary judgment motion in each of the above cases after the first summary judgment motions were denied; (See, Respondent's Initial Brief);

Appellant avers, it was improper for RPL (Riley Pope & Laney, LLC's) Agent (Former) Attorney, Heath M. Stewart, III, to file a subsequent motion for summary judgment "involving" the same stated facts, issues, arguments and defenses, which had already and previously been determined and adjudicated, which constituted a violation of Rule 43 (L), SCRPC.

which Rule 43 (L), SCRPC, provided in pertinent parts:

Held: "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, "no"

subsequent motion upon the "same state of facts" "shall" be made to any other judge in "that action." (Rule 43 (L), of the S.C. Rules of Civil Procedure.

Appellant avers, Respondents' knowingly and wilfully did "not" follow the provisions under Rule 43 (L), of the South Carolina Rules of Civil Procedure and thus, such conduct and action of Respondent's violated Appellant's procedural due process of law, rights, under the S.C. State Constitutional provision, Article I., Section 22, and Respondents' violated Appellant's due process of law, rights of the U.S.C.A. of Amendment 14th, as guaranteed of equal protection of the laws;

For these reasons, Respondents' claims are without merits;

#### STANDARD OF REVIEW

Where the issue involves the jurisdiction, the Appellate Court can take its' own view of the preponderance of evidence and review the "entire" record and resolve "jurisdictional doubt, and resolve "jurisdictional facts and law," under the S.C. Statutory Code of Laws, § 14-3-330, and under S.C. Constitutional provision, Article 4, section 5, and citing from authorities held in, State Ex Rel. Medlock vs. Love Shop, LTD., 334 S.E.2d 528 (1985);

Lack of jurisdiction of the subject matter can be raised at any time, and cannot be "waived" even by consent and may be raised in this Appellate Court for the first time without an exception; Citing from authorities held in, State vs. Brown,

570 S.E.2d 559 (S.C. App. 2002); And Citing from authorities held in, Blanton vs. Stathos, 570 S.E.2d 565 (S.C. App. 2002), (Holding, "A judgment by a Court "without" jurisdiction of both parties and of the subject matter is "nullity and void," and without legal effect, and must be treated by the Courts whenever and for whatever purposes it is presented and relied on;

ARGUMENT I.

"Whether the Presiding Judge "erred" in his findings in, time barring Appellant's claims or causes of action, under the statutory limitation, when Appellant filed notice and motion under the "Doctrine of Equitable Tolling and Equitable Estoppel?"

In the Respondents' Initial Brief, Arguments I., the Respondents' counsel responded on Page 06, and avers, "The Trial Court correctly dismissed claims barred by the Statute of limitations. (See, Respondents' Counsel Initial Brief).

Respondents' asserted in pertinent parts on Page 07, ¶ 01, lines 04 and 05, and ¶ 02, lines 01-04, provides:

Held: "the claims would be barred by the applicable statute of limitations as the Complaint was filed on May 22, 2013.

"The statute of limitations for personal injury actions for the injury to the rights of another is three (3) years. S.C. Code § 15-3-530 (5). Accordingly, Inmate's Complaint was filed more than three (3) years after the statute of limitations expired as to the last deposition taken. (See, Respondents' Initial Brief).

Appellant Opposing Reply:

Appellant asserts and argues, in the Respondents' Argument I., on Page 07, ¶ 01, Lines 04-05, under the "Fraud" claims statute of limitations period is "not" three (3) years in S.C. law, fraud claims under § 15-3-530 (7), is Six (6), years, and it does not commence until the fraud is discovered; Citing from authorities held in, Omni Outdoor Advertising, Inc. vs. Columbia Outdoor Advertising, Inc., 974 F.2d 502 (4th Cir. 1992);

Civil Conspiracy claims statute of limitations period is "not" three (3) years, in S.C. law, under § 15-3-530, citing from authorities held in, Omni Outdoor Advertising, Inc. vs. Columbia Outdoor Advertising, Inc., 974 F.2d 502 (4th Cir. 1992), it is commenced within "Six (6) years," time limit period;

Appellant's claims of "Abuse of legal process, statute of limitations period is three (3) years, § 15-3-530; Appellant's claims of bad-faith, unclean hands doctrine, judge shopping, and duplicity are governed under Rule 11, S.C. Rules of Civil Procedures and under the S.C. Frivolous Civil Proceedings Sanctions Act, § 15-36-10 et seq;

Respondents' asserted the statute of limitations period began to accrue during the last deposition hearing, which were on/or about, May 14, 2010, if that being so, then, Appellant's fraud and civil conspiracy claims time period would not expire until May 14, 2016;

Accordingly, the Respondents' erred and their Arguments I., is without merits, and the trial Court's ruling should not be affirmed;

Furthermore, in Respondents' I. Argument, Page 07, ¶ 03-04, and Page 08, ¶ 01, Respondents' asserted that Appellant indicate the "letter from Larry C. Smith, Richland County Attorney's office, dated February 27, 2013, "resolved" the filing of summons and complaint;

The letter from Mr. Smith, only initiated the process, once the Clerk of Court of Richland County, contact the Appellant and returning the "original copy of the Summons and Complaint, which were in their possession by way of an "micro-film," showing a clocked stamped & dated it would resolve the filing process.

The Clerk's office did not immediately contact the Appellant Appellant's siblings contact "both" the Richland County Attorney' office, to Ms. Elizabeth, in the absent of Mr. Larry C. Smith, and contact Ms. Judy N. Davis, Civil Records Manager, who, on/or about, May 13, 2013, apologized to Appellant's sibling and advise him to ask Appellant to return a copy, claiming to have misplace or lost Appellant's summons and complaint;

Once that process was sent from the Broad River Corrections' Mailroom to the Clerk's office, Appellant's summons and complaint did not returned to Appellant until a week later, dated filed May 22, 2013, and it was returned to the Broad River Correctional Mailroom on/or about, May 23, 2013; See, Volume I., ROA p. 259 (A);

Under these circumstances, Appellant's claims should be equitably tolled, because the Clerk's office failed to contact Appellant, and the summons and complaint were in their possession beyond the control of Appellant; Citing from authorities held

ii, Ross vs. Ross, 394 S.C. 261, 264, 715 S.E.2d 359, 360 (Ct. App. 2011);

Appellant also asserts, this issue and argument of the Respondents' is "not" preserved for appellate review, because it was not raised or addressed by the Respondents' in the Order, or April 24, 2014, Hearing proceeding or transcript of the Record (See, Order, Volume I., ROA pp. 05, 06, and p. 14; (See, Transcript of Record, Volume III., ROA p. 526, lines 24-25; p. 527, lines 01, thru 12;

For these foregoings, Respondents' Arguments is without merits, and this Court should not affirm the lower trial Court's ruling; Citing from authorities held in, Elam vs. S.Carolina Dep't of Transp., 602 S.E.2d 772, 779-80 (2004); Dillion County School Dist., No. 02 vs. Lewis Sheet Metal, 332 S.E.2d at 561 (Ct. App. 1985).

#### ARGUMENT II.

"Whether the Presiding Judge "erred" in denying and not permitting Appellant, by Motion for leave to Amend his Complaint before Defendants' (Respondents') were served, Appellant's Summons and Complaint?"

In the Respondents' Initial Brief, Argument II., titled, Inmate's Argument that the Trial Court failed to Address his Motion to Amend Pleadings Is not Preserved for Appellate Review; (See, Respondents' Initial Brief, pp.09, ¶ II);

#### Appellant Opposed Reply:

Appellant's Record shows in, Volume I., ROA pp. 142 thru 181; Volume II., ROA pp. 292 thru 293; and Volume IV., ROA

pp. 628 thru 635, and demonstrates Appellant's Notice/Motion to Amend Complaint, was raised and addressed before the lower Court on/about, April 24, 2014; (See, Appellant's Volume III., ROA p. 505, Lines 01 thru 11; p. 506, Lines 01 thru 19; but, on the contrary, the trial Court "failed" to rule on it in his Order, which was drafted up by the Respondents' Counsel Damon C. Wlodarczyk;

Appellant avers and argues, that his Motion to Amend Complaint, in Appellant's Rule 59 (e), SCRCP, Notice/Motion to Amend and/or Reconsider, was raised and addressed to the lower trial Court; (See, Appellant's Volume II., ROA p. 305, pp. 324, 325, 326, 332, and p. 333; but the lower trial Court "failed" to rule on the issues; Under case law cited in, Elam vs. South Carolina Dep't of Transportation, 602 S.E.2d 772, 779-80, Appellant's Motion to Amend Complaint is "preserved" for appellate review;

Accordingly, Respondents' Argument II., is without merits, and this Court should not affirm the lower trial Court's ruling;

### ARGUMENT III.

"Whether the first Two (2), Original prior unappealed Order -(s), are binding upon Respondents' in subsequent Motion proceedings, under Doctrine of the Law of the Case, as a result for the lack of jurisdiction?"

In the Respondents' Initial Brief, Argument III., titled, The Trial Court correctly dismissed Inmate's claims Relating to the Filing and Granting of Subsequent Summary Judgment Motions (See, Respondents' Initial Brief, pp. 09, 10, ¶ 01; p. 11;

Appellant Opposed Reply:

The Richland County Clerk's office record disclose and demonstrates that on/or about, September 06, 2007, Defendants' (former) counsel and who is currently the Respondent LeRoy Free Laney, filed their "Answer" and pled as an affirmative fifteenth (15th) defense, the S.C. Workers' Compensation Act, "exclusive remedy; (See, Appellant's Volume I., ROA pp. 63, and 64;

The Respondents' filed on/or about, October 26, 2007, a motion for summary judgment, supported with an Affidavit of Lieutenant Morris Elmore; (See, App. Volume III., ROA pp. 500 and 501, dated October 01, 2007); (Volume II., ROA pp. 405 thru 407, motion for summary judgment);

On/or about, January 10, 2008, a motion to oppose hearing was held at the Richland County Court of Common Pleas, before presiding Honorable G. Thomas Cooper, Jr., who, heard and entertained the issues, defenses and arguments, which was to include Respondents' filed "Answer" pleading the affirmative defense of the S.C. Workers' Compensation Act, "exclusive remedy, by and filed on/or about, September 06, 2007;

That, on/or about, January 14, 2008, Order by presiding Court, "Matter under Advisement; (See, Volume I., ROA p. 65); That, on/or about, March 26, 2008, by Order, presiding Court determined that triable issues exist, those issues must go to the jury; (Holding, "after considering the submissions of the Pro'se Plaintiff and counsel for Defendants' the Court "finds" that there are "issues" of fact to be resolved at trial; Denied

summary judgment against the Defendants; (See, Volume I., ROA pp. 63, 64); Citing from authorities held in, Baril vs. Aiken Reg'l Med'l Cntrs, 573 S.E.2d 830 (Ct. App. 2002); (Holding, "The merits of the issues "found" by a trial Court should be determined by a jury; Also see, Spencer vs. Miller, 192 S.E.2d 863 (S.C. 1972), (Holding, "Once the trial Judge having "found" that triable issues exist, trial Judge "must" leave those issues for a jury to determine;

The Respondents' never did file motion to amend/or reconsider, under Rule 59 (e), SCRPC, neither did the Respondents file an "appeal; Accordingly, those merits of the issues of facts found by trial Court (Honorable G. Thomas Cooper, Jr) on/or about, March 26, 2008, in Case 2007-CP-40-03742, is an interlocutory adjudication Order, and under the applicable standards of law, it required the Respondents' to appeal, § 14-3-330 (1), (2), the Order found merits of the issue of facts by the submission on file of the record; § 14-3-330 (1);

The Order, prevented a summary judgment, which it fell into the purview of the right of Respondents' to appeal, § 14-3-330 (2), of the S.C. Code of Laws, 1976; Rule 201, S.C. Appellate Court Rules;

The Respondents' had a standing and a right to appeal, if they (Defendants') had exercise reasonable due diligence, but failed to appeal, and thereby "waiving" any rights to object later in any subsequent proceeding base upon the same issues, defense and arguments; (Citing from Authorities held in, State Ex Rel. Medlock vs. Love Shop, LTD, 443 S.E.2d 554 (S.C. 1994);

(Holding, "that the second hearing Judge was "bound" by the findings of the first hearing Judge, on grounds of the same stated facts, in the same action, whom the first hearing Judge entered judgment; see, BELTON vs. STATE, 443 S.E.2d 554 (1994):

The S.C. Supreme Court ruled in, McLeod vs. Sandy Island Corp., 264 S.C. 463, 215 S.E.2d 903 (1975); (held, "defendants' in an action "must" plead all his/her defenses, whether legal or equitable, and he (Defendants') is "estopped" by judgment in the first proceeding from instituting a "separate proceeding on the same cause against the same party;

Also see, Eichman vs. Eichman, 329 S.E.2d 765 (1985); for these foregoing Respondents' are bound by the findings of the first Court and Respondents' for these reasons is without merit, and this Court should not affirm the lower Court's ruling;

#### ARGUMENT IV.

"Whether One (1), Circuit Court Judge has power, authority or jurisdiction to review, reverse or overrule the Findings of another Circuit Court Judge Involving the same stated facts, issues, defenses or the same subject matter in the same action?"

Appellant avers to the extent Respondents' relays on their Argument III., and thereby "waived" any objections, therefore, Appellant's pleadings in his Initial Brief remains; and should be sustained for review by this Court;

#### ARGUMENT V.

"Whether the Presiding Judge "erred" in his Findings in raising Case law, "Dorrell vs. South Carolina Department of Transportation," absent from implied-consent pleadings, which

was not before him, and plead Case Law, Hill vs. York County Sheriff's Department," was implied-consent before the Court?"

In the Respondents' Initial Brief, Argument III., the Respondents' asserts on Page 10, ¶ 03, provided in pertinent parts, held:

"The final Order referenced Dorrell, infra. However, Inmate fails to recognize that both case support the same proposition of law, that a party may file more than one summary judgment in a case. Therefore, the trial judge's Order should be affirmed. (See, Respondents' Initial Brief, p. 10, ¶ 03);

Appellant Opposed Reply:

According to the Authorities held in, Loftus vs. Loftus, 331 S.E.2d 372 (S.C. App. 1985); (Holding, "Due process requires that a litigant be place on notice and motion of the issues which the Court is to consider; A judgment or decree, whether in law or in equity, "must" conform to both pleadings and proof and be in accordance with theory of action on which pleadings are "framed" and case was "tried;"

ARGUMENT VI.

"Whether the subsequent Presiding Courts, (former) Judge J. Michelle Childs lacked the jurisdiction of subject matter, to review, and to reverse the "Original" unappealed Findings of Judge G. Thomas Cooper, Jr., And Whether Judge De Andrea Gist Benjamin, lacked jurisdiction of subject matter, to review and to reverse the "Original" unappealed Findings of (former) Judge J. Michelle Childs?"

In the Respondents' Initial Brief, Argument III., Page 09,

Page 10, and Page 11, ¶ 01, Lines 03 thru 05, provided in pertinent parts, held:

"Inmate also argues the trial court lacked subject matter jurisdiction to hear the second summary judgment motions. For the reasons set forth above, Inmate's argument is without merit and the trial court's order should be affirmed; (See, Respondents' Initial Brief, p. 11, ¶ 01, Lines 03 thru 05);

Appellant Opposed Reply:

In case law of authorities held in, McCain vs. Brightbarn, 399 S.C. 240, 730 S.E.2d 916 (S.C. App. 2012), (The S.C. Court of Appeals held, "while it is true, Brightbarn did "not" appeal "both" Orders, but as a matter of law, subject matter of jurisdiction can be raised at any time;

Likewise, in the Appellant's action, in case 2007-CP-40-03742, (former) Circuit Court Judge J. Michelle Childs was influenced and induce under (former) Defendants' counsel Heath M. Stewart, III, representation, that "Defendants' did "not" raise the S.C. Workers' Compensation Act "exclusivity" in the previous Order of presiding Judge G. Thomas Cooper, Jr., March 26, 2008, Order; But on the contrary, Defendants' counsel LeRoy F. Laney did raise the "exclusivity remedy as an affirmative defense, on/or about, September 06, 2007; (See, Volume I., ROA p. 54, ¶ 01, Lines 08 thru 10, Judge Childs' Order, June 10, 2010);

(See, Respondents' LeRoy F. Laney, Answer, ¶ 36, September 06, 2007; Volume I., ROA pp. 194 and 198); (See, Respondents'

Counsel Damon C. Wlodarczyk agreed and/or ratified his associates agent attorney's Heath M. Stewart, III, misconduct; (See, Volume II., ROA p. 261, p. 262, ¶ 02 and 03); (Respondents' counsel Wlodarczyk who currently defends for the Respondents' asserted, in pertinent parts:

¶ 02, Lines 03 thru 07, "the first Order denying summary judgment "did not address" whether the Plaintiff's negligence/gross negligence claims were "barred" by the "exclusivity provision" of the S.C. Worker's Compensation Act, etc.

Accordingly, the first Order denying summary judgment did address Plaintiff's negligence/gross negligence claims under the terms of barred by the "exclusivity provisions of the S.C. Worker's Compensation Act; (See, Volume II., ROA p. 261, p. 262, ¶ 02 and ¶ 03; (Citing, Authorities held in, Mario vs. Lewis, 697 S.E.2d 684 (S.C. App. 2010); (Holding, "A fraudulent act element is met by any characterized by knowingly being "dishonest in fact," and having a conduct of unfair dealing;"

Former, respective Circuit Court Judge J. Michelle Childs, even so was misled by Respondents' she (Judge Childs) erred and did not have jurisdiction to reverse or overrule, Judge G. Thomas Cooper, Jr., Order, of March 26, 2008, in the Case 2007-CP-40-03742; Likewise, respective Judge De Andrea Gist Benjamin "erred" and did not have jurisdiction or authority to reverse (former) Circuit Court Judge Childs' Order, of April 05, 2010, in the case, 2009-CP-40-02442, and citing from the authorities held in, State ex Rel. Medlock vs. Love Shop, LTD., 443 S.E.2d 554 (S.C. 1994);

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Appellant argues, "lack of jurisdiction of the subject matter can be raised for the "first-time" even on appeal, and can be raised "sua-sponte" by the Court; Citing, Brown vs. State, 570 S.E.2d 559 (S.C. App. 2002); "A judgment by a Court "without" jurisdiction of both parties and of the subject matter is " nullity and void" without any legal effect, and "must" be treated by the Courts whenever and for whatever purposes it is presented and relied on; Citing from Authorities held in, Blanton vs. Stathos, 570 S.E.2d 565 (S.C. App. 2002);

For these foregoings, Respondents' erred in their arguments and is without merit and this Court should "not" affirm the lower trial Court's ruling.

ARGUMENT VII.

"Whether The Respondents' action in both cases, in 2007-CP-40-03742, and in, 2009-CP-40-02442, pleading the same stated facts, Issues, defenses, and arguments in a subsequent proceeding , in the same action, "gave rise" to causes of action of "Abuse of Legal Process?"

In the Respondents' Initial Brief, Argument IV., titled, "The Trial Court Correctly Dismissed Inmate's Claims Regarding Abuse of Process," on Page 11;

Appella it Oppose Respondents' Argument VI.

The purpose of Respondents' filing a subsequent motion for summary judgment, obtain a favorable ruling, and with hopes that Appellant will not have a jury trial, in that, Respondents' succeeded, such conduct of Respondents' was not proper in the regular conduct of the proceedings; Citing from Authorities

held in, Broadmoor Apartments of Charleston vs. Horwitz, 306 S.C. 482, 486, 413 S.E.2d 9, 12 (1991); The essential elements of abuse of process are: 1) an ulterior purpose; and 2) a wilful act in the use of the process not proper in the regular conduct of the proceeding;

In, both of Appellant's action, cases 03742 and 02442, Respondents' was defeated in both cases, when both cases ruled of finding triable issues of facts of the merit of the submission existed; (See, Volume I., ROA pp. 63, and 64, Case 03742 and ROA pp. 41, and 42);

Defendants' in both cases chose not to appeal, the merits of the Court's action; § 14-3-330; Respondents' purported to conduct "depositions" when in fact it produced cumulative effect, Nelson vs. Charleston & W.C. Ry., Co. 98 S.E.2d 798 (S.C. 1957), etc., Defendants' counsel Stewart, III, filed a subsequent motions for summary judgment; That, on/or about, January 14, 2010, asserts that they (Defendants') did not raise the S.C. Worker's Compensation Act exclusivity in the previous summary judgment Order; (See, Judge Childs' Order, Volume I., ROA p. 54, ¶ 01, lines 08 thru 10);

Defendants' knew that his associate attorney LeRoy F. Lapey, had file the "exclusivity remedy" in their Answer, on/or about, September 06, 2007, but wilfully ignored that fact;

Appellant avers the essential elements of abuse of process rests in these facts;

1). Defendants' having an ulterior purpose to convince the subsequent Judge Childs that they (Defendants') did not

raise the S.C. worker's compensation Act, "exclusivity remedy" when they knew they did and the subsequent Court "relied" upon Defendants' counsel representation and as a result denied Appellant's claims; 2) When Defendants' counsel Stewart, III, filed the subsequent motion for summary judgment, such act was wilful, on/or about, May 07, 2009, and the other filed on/or about, February 23, 2011, and such use of filing both subsequent motions for summary judgment process was "not" proper in the regular conduct of the proceeding;

Defendants' hope of obtaining a favorable ruling, to prevent Appellant from having a jury trial; Broadmoor Apart'mts of Charleston vs. Horwitz, 413 S.E.2d 9, 12 (1991);

For these foregoings the Respondents' is without merit and this Court should not affirm the lower trial Court's ruling;

#### ARGUMENT VIII.

"Whether The Respondents' had a duty to disclose the material facts to the subsequent Court, those facts that previous "existed" ON THE Clerk of Courts' record, and "Whether the Respondents' acted in "bad-faith," for failure to disclose those facts to the subsequent Courts, before those two (2) Courts made its' determination, which resulted to the outcome of the proceeding?"

In, Respondents' Initial Brief, Argument V., titled, "The Trial Court Correctly Dismissed Inmate's Claims Regarding Bad-Faith."

Appellant Opposing Reply:

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Appellant avers and argues, when Respondents' filed their Answer on/or about, September 06, 2007, and pled on Page 05, ¶ 36, an affirmative defense of the S.C. Worker's Compensation Act, "exclusivity remedy; and was "denied" of their summary judgment motion, by Order, on/or about, March 26, 2008, and failed to appeal, § 14-3-330;

Afterwards, Respondents' purported to motion for deposition claiming of new evidence, when in fact, there were none, only produce the same facts, which once was denied and went to a January 14, 2010, motion hearing, and asserted that they (Defendants') did "not" raise the S.C. Worker's Compensation Act exclusivity in the previous summary judgment Order, before Judge G. Thomas Cooper, Jr., for the March 26, 2008, Order;

Such conduct gave rise to "dishonesty" and under the Black's Law Dictionary defines "bad-faith" as dishonesty, such dishonesty encompasses fraud or knowingly making false statement of material facts to a tribunal in a adjudication proceedings;

Citing from Authorities held in, Mario vs. Lewis, 697 S.E.2d 684 (S.C. App. 2010); (Holding, "A fraudulent act element is met by any characterized by knowingly being "dishonest in fact," and having a conduct of unfair dealing;"

For these foregoing Respondents' engaged in conduct involving "dishonesty" which gave rise to bad-faith, and the Respondents' is without merit, and this Court should not affirm the lower trial Court's ruling;

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ARGUMENT IX.

"Whether the Presiding Judge "erred" in his Findings, by dismissing with prejudice Appellant's Claims or Causes of Action of Duplicity?"

In the Respondents' Initial Brief, Argument VI., titled, "The Trial Court Correctly Dismissed Inmate's Claims Regarding Duplicity."

Appellant Opposing Reply:

Appellant refers and restates his Argument in his Initial Brief, Page 41, and Citing authorities held in, Re Lathan, 600 S.E.2d 902 (S.C. 2004); and for the foregoing the Respondents' is without merit, and this Court should not affirm the lower Court's ruling;

ARGUMENT X.

"Whether the Presiding Judge "erred" in his Findings, by dismissing with prejudice Appellant's claims or causes of action of Unclean-Hands?"

In the Respondents' Initial Brief, Argument VII., titled, "The Trial Court Correctly Dismissed Inmate Claims Regarding Unclean Hands."

Appellant Opposing Reply:

Appellant refers, realleges and restates his Argument X., in his Initial Brief, Page 42 and 43, Citing Authorities held in, Wachovia Bank N.A. vs. Coffey, 689 S.E.2d 244 (S.C. App. 2010); and for the foregoing the Respondents' Argument VII., is without merit, and this Court should not affirm the lower Court's ruling;

ARGUMENT XI.

"Whether The Presiding Judge "erred" in his Findings, by dismissing with prejudice Appellant's Claims or Causes of Action of Civil Conspiracy?"

In the Respondents' Initial Brief, Argument VIII., titled, "The Trial Court Correctly Dismissed Inmate's Claims Regarding Civil Conspiracy."

Appellant Opposing Reply:

Appellant refers to Appellant's Initial Brief, Argument I., Paragraph(s) and herein, refers, realleges and restates his Argument in his Initial Brief, on Page(s) 43, 44, 45, 46, and for the foregoing, Respondents' Argument VIII., is without merit, and respectfully request this Court not to affirm the lower trial Court's ruling.

CONCLUSION

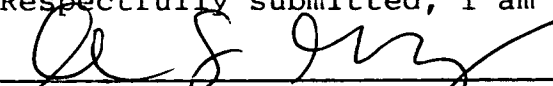
Finally, Appellant avers, under the Authorities cited in, Logan vs. Cherokee Landscaping & Grading Co., (S.C. App. 2010) 698 S.E.2d 879, 240, (Holding, "Under Rule 12 (b)(6), of the S.C. Rules of Civil Procedures, a motion for failure to state facts sufficient to constitute a cause of action, should not be "sustained," if the facts alleged and inferences reasonably deducible therefrom would entitle a party to any relief on any theory of the case.

For the foregoing set forth herein, Appellant respectfully request this Court not to affirm the lower Court's decision, and reverse it's findings.

November 04, 2015

Respectfully submitted, I am

S/

  
CLARENCE S. GREGORY, #227394

APPELLANT PRO' SE

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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

Appeal From The Richland County  
Court of Common Pleas From Orders of  
Honorable G. Thomas Cooper, Jr.,  
Fifth Judicial Circuit Court Judge

NOV 13 2015  
SC Court of Appeals

Appellate Case No.: 2015-000740

Case No.(s) 2013-CP-40-03078  
2007-CP-40-03742

Subsequent Interlocutory Orders of (Former) Circuit Court Judge,  
Honorable J. Michelle Childs:

Case No.(s): 2007-CP-40-03742  
2009-CP-40-02442

Subsequent Interlocutory Order of Circuit Court Judge,  
Honorable De Andrea Gist Benjamin:

Case No.: 2009-CP-40-02442

Clarence S. Gregory, . . . . . Appellant,  
Verses

Riley Pope & Laney, LLC, Law Firm, Attorney(s) and Counselor(s)  
at Law; Individually and Individually named; Theodore D. Riley,  
T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, Of Whom  
All are sued In Their Individual and Professional Capacities,  
Riley Pope & Laney, Limited Liability Contractor(s)(LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named,  
Of Who, Formerly Employed with Riley Pope & Laney, LLC, Law  
Firm, An Agent Attorney Is Sued In His Individual and

Professional Capacities, Et Al.,

All whom are named as Defendants,  
Of which, Riley Pope & Loney, LLC, Is The Respondent.

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CERTIFICATE OF SERVICE

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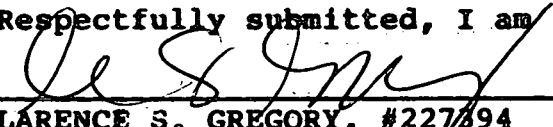
This is to certify that I, Clarence S. Gregory, #227394, Pro'se Appellant, hereby have cause on this day, November 09, 2015, to be served upon the person(s) named below the attached, Cover Letter, Appellant's Reply To The Respondents' Initial Brief And Designation of Matter to be Included in the Record on Appeal, with this Certificate of Service, in the above-captioned action, from within Broad River Correctional Institution' Mailroom, by depositing the same, via in the United States' Regular Mail, first Class postage prepaid, to the following Individual(s):

The S.C. Court of Appeals  
Honorable Jenny A. Kitchings  
Clerk of Court  
1220 Senate Street  
Post Office Box 11629  
Columbia, South Carolina 29211-1629

**Riley Pope & Loney, LLC, Law Firm**  
**C/o Mr. Damon C. Wlodarczyk, Esquire For Respondent**  
**Attorney(s) And Counselor(s) at Law**  
**2838 Devine Street**  
**Post Office Box 11412**  
**Columbia, South Carolina 29211-1412**

Columbia, S.C.

November 09, 2015

Respectfully submitted, I am  
s/   
CLARENCE S. GREGORY, #227394  
APPELLANT PRO'SE 2015-000740