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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Harrington, Circuit Court Judge

Case No. 2011-CP-10-1559

WILDFLOWER NURSERY, INC. d/b/a PLEASANT LANDSCAPES . . . . . Appellant

v.

JOSEPH W. BEASLEY Jr. a/k/a BILLY BEASLEY . . . . . Respondent

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FINAL BRIEF OF RESPONDENT

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I. PROCEDURAL POSTURE

The instant action commenced with the filing by Appellant Wildflower Nursery, Inc d/b/a Pleasant Landscapes of a complaint in the Court of Small Claims of Charleston County, alleging that Respondent was indebted to it in the amount of $5,999 39 remaining unpaid on a contract to install an in-ground pool for Respondent. Respondent counterclaimed in the amount of $15,300, the amount asserted to be necessary to remediate and complete Appellant's defective and unfinished work As the counterclaim exceeded the jurisdictional limit of the Small Claims Court, the matter was removed to Circuit Court on March 1, 2011

The original Small Claims complaint was filed by James Parker on behalf of the corporation. After removal, on September 23, 2011, Respondent filed a Motion to Strike the complaint on the grounds that it had been filed by a non-lawyer. Appellant did not respond to the filing of this Motion, either by way of document or retaining counsel to represent it, and did not appear at the hearing held on May 7, 2013. In fact, it appears from the Court's files and the history maintained by the Clerk of Court that there was no action of any kind in this case between the filing of Respondent's Motion and the trial, some year-and-a-half later.

On May 9, 2013, trial was held before the Honorable Kristi Harrington. Plaintiff failed to appear, although the Court noted that it was apparent from the Clerk's file that it had been notified of the date and time of the hearing Notices from the Clerk's office were sent to the Post Office Box identified both in its complaint and in the subsequent affidavit of James Parker as being the principal address of the corporation At the conclusion of the trial, the Court granted Respondent's Motion to Strike In addition, following the testimony of Respondent, it granted him judgment in the amount of $10,300 on his counterclaim Although the Form 4 issued by the Court indicated that a formal order would follow, the Clerk of Court docketed this as constituting

a judgment in Respondent's favor. Plaintiff filed a Motion seeking the appointment of a receiver, in response, Appellant, continuing to act *pro se*, filed a Motion to vacate the judgment. The Motion to Vacate was denied on June 9, 2014. At the same time, Respondent's request to commence supplemental proceedings was granted. The Trial Court did not issue a formal order until July 3, 2014; Appellant's motion to reconsider that Order was denied on July 21, 2014. Appellant filed timely Notices of Appeal following both the denial of the Motion to vacate and the issuance of the formal Order.

II. FACTS

Appellant was hired by Respondent to install an in-ground pool, and to perform landscaping services at his home Because Respondent believed that the work was defective, and would have to be replaced, he refused to pay the outstanding balance at the conclusion of Appellant's work.

Appellant originally brought suit in the Court of Small Claims The initial complaint requested $5,999.39 in actual damages, and was filed by James Parker, Appellant's principal. Beasley's answer, also filed *pro se*, alleged that the much of the work would have to be repaired and/or replaced, and that the lowest estimate he had received was for $15,300. The first scheduled trial date was continued at Respondent's request Shortly thereafter, on February 22, 2011, counsel for Respondent made an appearance. At that time, the case was removed to Circuit Court, on the grounds that the counterclaim of $15,300 exceeded the jurisdiction of the Magistrate Following the transfer, Respondent filed a Motion to Strike the complaint, on the grounds that it had been filed, on behalf of a corporation, by a non-lawyer. In conjunction with the trial of the case on the merits, that motion was heard on May 9, 2013, and granted. The Trial

Judge also granted judgment in Respondent's favor on his counterclaim, in the amount of $10,300.

The final proceeding in this action was not, significantly, a hearing on Respondent's Motion to Strike. Rather, it was a trial on the merits, a trial at which Appellant failed to appear. The Motion to Strike was granted not solely because Appellant was attempting to represent a corporation, but because Appellant was not present at the trial of the case. None of Appellant's arguments on appeal are in any way related to the actual claims of the parties, whether those contained in the complaint or those of the counterclaim.

III. ARGUMENT

A. The Motion to Strike Was Properly Granted, and Appellant Received the Notice to Which It Was Entitled at All Stages of the Proceeding.

Appellant's first arguments – that the hearing on Respondent's Motion to Strike was held without notice and that the formal Order of July 3, 2014 was issued *ex parte* – overlap and will be addressed together. Both of these arguments are, in essence, a claim that at one or more points during the lower court proceedings Appellant was deprived of its rights to due process. This is simply incorrect

Respondent does not disagree with the broad contention that, as explained by Appellant, "[i]t is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard .." *Webster v Clanton*, 259 S.C. 387, 391, 192 S E.2d 214, 216 (1972) However, the facts clearly demonstrate that Appellant had all of the notice to which it was entitled, as well as notice of its responsibility to retain counsel in order to effectively oppose it. It had the opportunity to be heard It chose not to exercise it Despite Appellant's claims to the contrary, the files of the Clerk of Court of

Charleston County clearly demonstrate that Appellant was given all of the notice to which it was entitled.

There is no question about the fact that Appellant was served with the Motion to Strike. That Motion was served upon Appellant at its corporate address, P.O. Box 445, Isle of Palms That address is the same as appears on Appellant's original complaint filed in the Magistrate's Court, and is the address Appellant claims in the affidavit of James Parker to be its principal business address Appellant states that it continued to check with the Clerk's Office following service of the Motion in order to attempt to discover when the trial would be held. It further states, in its *pro se* Motion to Vacate the Judgment, that "upon information and belief," Respondent then began to mail notices to 4953 Highway 17 North, Awendaw, and to address them to one Myra Clark. Even setting aside the question of how or where Respondent would have obtained this name and address, and the fact that there is nothing in the file – and, notably, nothing submitted by Appellant – to show that anything of any nature was sent to Ms Clark, hearing notices would come from the Clerk, not from Respondent.

Respondent's Motion to Strike was filed on September 23, 2011 According to the Clerk's records, maintained in its computerized filing system, *see* R. ___, the Clerk notified Appellant, and counsel for Respondent, on March 28, and again on April 30, of the hearing scheduled for May 9, 2013. Those records show that the only address listed for Appellant is that of the post office box it says constitutes its mailing address. The Trial Court would not have inquired further as to notice, because the file itself made it apparent that notice had been sent

Furthermore, although Mr. Parker states that he did not appear at the trial due to lack of notice, he does not – and cannot – demonstrate that any injury occurred as a result of his failure to do so. The Trial Court granted the Motion to Strike on the grounds that Appellant could not

appear through its principal, who was not a licensed attorney. It is, of course, unlikely in the extreme that this same court would have permitted that non-lawyer to make statements or arguments, to examine witnesses, or to otherwise appear or testify before it. There was, under these circumstances, no prejudice whatever to Appellant even if it was not in fact notified of the hearing. In fact, Appellant did not actually retain counsel until November, 2013, some six months after its complaint was stricken from the record. Its own Motion to Vacate the Judgment – filed only because Respondent began enforcement action – was, once again, filed *pro se* by a non-lawyer That Motion would have had no more effect on the Trial Court than did the already-stricken complaint. It was a further attempt by an unlicensed individual to attempt to represent a corporate party, an act specifically prohibited by law. *See Renaissance Enters , Inc v Summit Teleservices, Inc* , 334 S.C 649, 515 S E 2d 257 (1999).

It is easily possible to demonstrate that all necessary steps and actions were taken to ensure that such notice was received. Notice of hearing dates and times comes from the Clerk of Court of Charleston County. That Office had one and only one address listed for Appellant, the address that Appellant confirms is its principal mailing address. This is the address on the original complaint filed in Magistrate's Court by Appellant. It is the address provided by James Parker in his Affidavit The Clerk's records show that notice was sent on two separate occasions. The mailing of notice to the last known address of the party is sufficient to satisfy due process. *See, e g , Delta Apparel, Inc v Farina*, 406 S.C 257, 750 S.E.2d 615 (Ct App. 2013), *NCNB South Carolina v Floyd*, 303 S.C 261, 399 S E.2d 794 (Ct. App 1990) As Appellant was provided with notice in accordance with law, notice sufficient to satisfy the requirements of due process, the argument that the judgment against it is void is without merit, and the Motion to Strike was properly granted

B. The July 3, 2014 Order Could Not Be Submitted to Opposing Counsel as No Opposing Counsel Existed at the Time It Was Submitted to the Court.

Appellant further contends that the formal Order, issued on July 3, 2014, is void as it was submitted to the Trial Court *ex parte*. It contends that such process violates the Rules of Civil Procedure, and that it was prejudicial to Appellant. Both of these allegations are erroneous

For some reason, the Trial Court did not actually sign the formal Order until July 3, 2014. However, it was sent to the Trial Judge on May 10, 2013. *See*, email dated 5/13/2013, R. p 112. At the time the Order was drafted and submitted, and as indicated by the text of the email, there was no opposing counsel to whom it could have been submitted At that time, and for months following the submission, Appellant was *pro se*, *supra*, and, once the Motion to Strike was granted, had made no appearance at all. There was nobody to whom to submit the draft. Consequently, contrary to Appellant's argument, there was no violation of Rule 5(b)(3) of the South Carolina Rules of Civil Procedure. Respondent does not disagree with any of the statements of the law as set out by Appellant. They do not, however, apply to this case, and there was nothing improper about the submission of the draft Order to the Trial Court.

C. The Motion to Strike Was Properly Granted.

Appellant cites to *Brown v Coe*, 365 S.C. 137, 616 S E 2d 705 (2005), for the general proposition that the Motion to Strike should not have been granted. As Appellant notes, the *Brown* Court found that in the situation before it the non-attorney personal representative had been inadvertently led to believe that her representation was proper, and dismissal of the action was an overly harsh sanction. While this is a correct statement of the decision of the *Brown* Court itself, it is immaterial to this case.

As Appellant notes, the Supreme Court found that the precise issue – whether a non-attorney personal representative was permitted to represent an estate – had never been expressly

addressed by the South Carolina courts. Relying on cases from those jurisdictions which had dealt with the issue, the Court held that such representation constituted the unauthorized practice of law. *Id* The decision to permit her an opportunity to retain counsel, rather than outright dismissal of the action, was predicated on the facts of the case before the Court. The Court found that the personal representative's legal representation of the estate had never before been challenged, and that she therefore reasonably believed that she was allowed to do so It was for this reason, combined with the fact that the issue itself was novel, that the Court remanded the case, rather than dismissing the entire action.

This is clearly inapplicable herein. Representation of a corporate entity by an individual not licensed to practice law does not raise novel issues *See, Renaissance Enters, supra.* It is well-established in this State that such representation is only permitted where allowed by statute – in the Small Claims Courts. S.C Code § 40-5-80. Mr. Parker was definitely advised, certainly not later than the filing of the Motion to Strike, that his continued representation of the corporate Appellant was impermissible. Despite the express warning that Respondent was seeking to have the complaint dismissed for precisely this reason, a warning that was received by Appellant on or about September 22, 2011, Appellant failed to obtain counsel In fact, even after the grant of Respondent's Motion, Mr Parker continued to attempt to represent Appellant, filing a *pro se* Motion to Vacate in September, 2013. It finally retained the services of a lawyer, who entered his appearance on November 8, 2013, well after the Motion was filed and served upon Appellant, and long after the hearing.

The personal representative in *Brown* did not know, and could not have known, that her continued representation of decedant's estate was improper Unlike that situation, Appellant herein was advised in 2011 of the existence of a clear body of law that made its principal's

representation of it illegal. Appellant did nothing to cure that problem, although it certainly had ample opportunity, until over two years later Even had the Trial Court granted it thirty days from the date of the hearing to retain a licensed attorney, that date would long have passed before it finally did so More importantly, as noted *supra*, this action was before the Court for purposes of a trial on the merits, a trial at which Appellant failed to appear, not a hearing on the Motion to Strike. That Motion was granted not only because of Appellant's failure to retain counsel, but because he failed to appear to prosecute his case. In this case, striking the complaint was the appropriate remedy.

Appellant further contends that it is "manifestly unjust" for the Trial Court to have granted the Motion to Strike while ignoring procedural defects in the form of the Counterclaim filed by Respondent. It is, of course, important to note that while the structure of the Counterclaim might constitute a procedural defect, the signing of pleadings by a non-attorney attempting to represent a corporation is not procedural in nature. It is the illegal practice of law Furthermore, as Appellant itself notes in its Initial Brief, both the Complaint and the Answer were defective as far as Circuit Court is concerned. Had either party sought to file one of these documents in Circuit Court initially, the Clerk would have rejected them

They were not, however, filed in Circuit Court They were transferred there from the Magistrate's Court, and met the standards for pleadings in that forum. There has never been an obligation on the part of the litigants in a removed action to redraft their pleadings to comport with the Rules of Civil Procedure They are routinely accepted in the form in which they are transferred

The "procedural defect" in Respondent's pleadings of which Appellant now complains does not exist. The Answer and Counterclaim, although not filed on the Magistrate's forms,

were in full compliance with the Rules of that Court. The "procedural defect" in Appellant's own pleadings, the "procedural defect" for which the Complaint was stricken, is not procedural at all. It is an illegal act, and a violation of long-established law in this State. The Complaint was properly stricken.

D. The Timing of the Supplemental Proceedings and Other Post-Judgment Actions Is Immaterial, and Does Not Affect the Validity of the Judgment Itself.

As a final argument in support of its contention that the original judgment should be vacated, Appellant argues that the fact that Respondent sought enforcement prior to the issuance of the formal Order of June, 2014, mandates that all of the Orders of the Trial Court be set aside. This argument is irrelevant to any actual issue.

Whether or not the Form 4 constituted a final judgment[1], or whether final judgment was not rendered until the formal Order was entered over a year later, is immaterial at this stage Had Appellant sought to raise this argument at some point between the issuance of the Form 4 and the final Order, as grounds to halt the enforcement proceedings, there might be some reason to go into detail with regards to this argument However, it is moot Whichever document constitutes the final judgment, that judgment has now been entered Appellant is subject to enforcement action now, and that it might possibly have taken place prematurely does not affect the rights of either of the parties. This argument has no bearing on the substance of the judgment

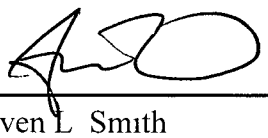
[1] It was not only recorded as such by the Clerk, but Appellant's own subsequent Motions sought to have the judgment of the Trial Court vacated, an act that only occurs when a judgment is final

CONCLUSION

For the reasons set forth above, the decisions of the Trial Court should be affirmed.

Respectfully submitted,

SMITH | CLOSSER, P.A.



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellants' Final Briefs are in compliance with Rule 211 (b) of the South Carolina Rules of Appellate Procedure.

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v

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of Appellants' Final Brief has been served upon counsel of record via US MAIL on the 7th day of May 2015, to the address shown below.

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