

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

CASE NO. 2014-001747

JOSEPH C. SUN Appellant

v.

MARSHALL L. HORTON Respondents
and RICHARD ULBRICH

RECORD ON APPEAL

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

Gregory Michael Galvin, Esq.
Attorney for Marshall Horton
P.O. Box 887
Bluffton, SC 29910
843-227-2231

Lindsay Y. Goodman, Esq
49 Boundary Stree, 2nd Fl.
P. O. Box 3766
Bluffton, SC 29910
843-757-6190

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SEP 28 2015
SC Court of Appeals

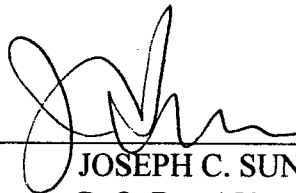
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CERTIFICATE OF COUNSEL

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.

September 15, 2015.



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

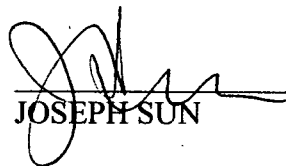
PROOF OF SERVICE

I certify that I have this date served the Appellant's Record on Appeal on Respondents Horton and Ulbrich by depositing a copy of same in the U.S. Mail postage prepaid, on September 15, 2015, addressed to their attorneys on record:

Gregory Michael Galvin, Esq.
Attorney for Marshall Horton
P.O. Box 887
Bluffton, SC 29910

Lindsay Y. Goodman, Esq
49 Boundary Street, 2nd Fl.
P. O. Box 3766
Bluffton, SC 29910

This 15th day of September, 2015.


JOSEPH SUN

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)	FOURTEENTH JUDICIAL CIRCUIT	
COUNTY OF BEAUFORT	)	CASE NO.: 2014-CP-07-0238	
)		
JOSEPH C. SUN,)		
)		
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S	
	)	MOTION TO DISMISS	
vs.	)	(with prejudice)	
)		
MARSHALL L. HORTON AND)		
RICHARD ULBRICH,)		
)		
Defendants.)		
)		

2014 JUL 11 PM 12:37
 CLERK OF COURT
 JUDICIAL CIRCUIT
 BEAUFORT COUNTY
 SOUTH CAROLINA

This matter came before the Court on April 23, 2014, pursuant to the Defendant's Motion to Dismiss and Motion for Sanctions filed February 12, 2014. Present at the current hearing was the Plaintiff Joseph Sun, *pro se*; Gregory M. Galvin, Esq., attorney for Marshall L. Horton; and Lindsay Y. Goodman, Esq., attorney for Richard Ulbrich.

Plaintiff filed his Summons and Complaint on February 3, 2014 and Defendants served their timely Answer and Counterclaim on February 10, 2014. The issues brought up in Plaintiff's Complaint concern Mr. Horton's service as a court appointed private Guardian *ad Litem* in the case captioned *Liling Xie Sun v. Joseph C. Sun*, case no. 2011-DR-07-1823. Mr. Ulbrich is made a party to this action solely for his actions as serving as a process server for Mr. Horton in effecting service of a signed court order on Plaintiff.

Notice of this current hearing was provided to the Plaintiff via regular U.S. Mail sent on March 7, 2014. All pleadings and motions have been properly served.

At the April 23, 2014 hearing, referenced to various court orders from case no. 2011-DR-07-1823 were made and the Court was not in possession of these various orders, thus the Court

asked the Defendants to present affidavits attaching these Orders within twenty days of this current hearing. Defendants asked for an extension of time to compile these affidavits, and this Court granted this extension. All affidavits and Orders have been timely provided to this Court.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. That the Plaintiff is a resident of Beaufort County, South Carolina. The Defendants are both residents of Beaufort County, South Carolina.
2. This current dispute concerns only Mr. Horton's actions (and Mr. Ulbrich's serving a court order on behalf of Mr. Horton) as a court appointed private Guardian *ad Litem* in the case of *Liling Xie Sun v. Joseph C. Sun*, case no. 2011-DR-07-1823.
3. That this Honorable Court has jurisdiction over all matters herein, and venue is proper.
4. Mr. Horton was appointed Guardian *ad Litem* by in case number 2011-DR-07-1823 by order dated March 20, 2012 by the Honorable Alvin Johnson. This Order was by consent of all the parties
5. In review of the pleadings, all challenges to Mr. Horton's activities as Guardian *ad Litem* should be (or should have been) made in case number 2011-DR-07-1823. This includes any issues with Mr. Horton's final accounting for Guardian *ad Litem* charges. This Court does not have jurisdiction to act as an appellate court for the Beaufort County Family Court, which is in essence what Plaintiff Sun seeks in this suit. This also includes claims against Mr. Ulbrich, as Mr. Ulbrich's role was only as Mr. Horton's agent for the purposes of service of a court order.
6. To the extent that it is necessary, this Court acknowledges that private a Guardian *ad Litem* enjoys quasi-judicial immunity by virtue of the South Carolina Supreme Court ruling in

Fleming v. Asbill, 483 S.E.2d 751, 326 S.C. 49 (S.C. 1997), and all of the claims set forth by Mr. Sun are barred under *Fleming*.

7. Mr. Ulbrich's involvement in this action as a process server is unclear from the Complaint but has been clarified by the requested affidavits. As for Mr. Ulbrich I find that he acted only as Mr. Horton's, the Guardian *ad Litem*, agent and thus I grant summary judgment as to the claims against him.

8. As such, this Court finds that there are no causes of action set forth in the Plaintiff's complaint to which would allow the Plaintiff to recover from either Defendant.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

- A. Plaintiff's complaint is dismissed, with prejudice; and
- B. Defendants' claims for sanctions is denied; and
- C. All outstanding motions are hereby denied and this is a Final Order.

AND IT IS SO ORDERED



The Honorable Marvin H. Dukes, III
Master in Equity, Fourteenth Circuit

Beaufort, South Carolina

7 / 11 , 2014

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

JOSEPH C. SUN, as Father of Minor)
Child Abigail Sun, as well as for Himself,)
Plaintiffs,)

CASE NO: 2014-CP-07-00238

v.)

MARSHALL L. HORTON and)
RICHARD ULBRICH,)
Defendant.)

COMPLAINT

2014 FEB -3 PM 3:05
CLERK OF COURT
BEAUFORT COUNTY, SC

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

1.

Defendant Marshall L. Horton is a practicing attorney in Beaufort County, South Carolina. His office is located at 49 Boundary Street, Second Floor, Bluffton, South Carolina 29910, therefore, he is subject to the jurisdiction of this court.

2.

Defendant Richard Ulbrich is a coconspirator and co-defendant in this case because he conspired with, aided and abetted Defendant Horton in committing several criminal and/or tortuous acts against Plaintiff Sun, therefore, he is subject to the jurisdiction of this court. Defendant Ulbrich resides at 144 Good Hope Road, Okatie, South Carolina 29909, therefore, he is subject to the jurisdiction of this court.

3.

Some time in 2011, Plaintiff Sun visited Defendant Horton at his office in Bluffton, SC regarding a civil suit Sun intended to file. At the end of the interview, Plaintiff decided that Defendant Horton did not appear to have the experience in those matter therefore expressed his desire to find another lawyer. Defendant Horton was displeased and informed Plaintiff Sun that

there was a consultation fee of \$200.00. Plaintiff Sun refused to pay because there was no such understanding prior to the meeting and Defendant Horton had not done anything meaningful for or given Plaintiff any advice. Defendant Horton showed extreme animosity.

4.

Near the end of 2011, Defendant Horton was assigned the position of Guardian ad Litem in a Beaufort County Family Court Case No. 2011-DR-07-1823 filed by Plaintiff's ex-wife LiLing Sun seeking change in custody condition in which case Plaintiff Sun was the Defendant. Plaintiff Sun raised his objection against the assignment of Marshall Horton as Guardian ad Litem in the Family Court based on the animosity and adversity Defendant Horton had against him. Defendant Horton refused to disqualify himself and stayed on, falsely claiming he would be neutral. Plaintiff Sun was misled to believe Defendant Horton's false pretense and allowed Horton to stay on as Guardian ad Litem in the case.

5.

Defendant Horton is guilty of committing fraud on the Family Court and especially against Plaintiff Sun in pretending that he would be a fair and impartial Guardian ad Litem when in fact he had already plotted a scheme to injure Plaintiff Sun and his minor daughter Abigail, and to defraud money from Plaintiff Sun. Defendant Horton's scheme of fraud was to pretend and make false impression and promise to the court and Plaintiff that he would do a truthful, fair and impartial investigation, evaluation and report regarding the two parties - Plaintiff Sun and his ex-wife, when he had actually plotted to spend the majority of the time to visit Plaintiff's opponent - his ex-wife and her new husband, then use hyperbole and unverified facts to paint a favorable picture on Plaintiff's ex-wife and her husband, while on the other hand, fabricate and/or use unfounded false

statements to degrade Plaintiff Sun in his Guardian report as his means of paying vengeance against Plaintiff, and to defraud money from Plaintiff with his Guardian fees.

6.

Defendant Horton testified under oath in the custody trial on about August 1, 2013 that his fees totaled about \$5,000.00 and that both parties had already paid him a combined \$2,000.00 retainer. After Plaintiff criticized Horton's numerous false and fabricated statements in his Guardian Report, Defendant Horton increased his total fee to about \$9,000.00 without any basis or justification, and required Plaintiff to pay the difference. Defendant Horton had never given details to justify his fee or the increase after the trial.

7.

Plaintiff filed a fee dispute at the South Carolina State Bar and started to make installment payments of \$300.00 per month until the full amount determined by the State Bar is paid. Defendants Horton and Ulbrich began their harassing tactic by conspiring to stalk Plaintiff and criminally trespass Plaintiff's residence and private working site, and repeatedly peep into Plaintiff's home and take numerous photographs with the pretense of service of certain paper regarding the fee. Defendants Horton and Ulbrich's outrageous acts had caused Plaintiff and his family in fear and distress, and their privacy invaded by these defendants.

8.

Defendants Horton and Ulbrich conspired to commit their criminal trespassing by ignoring the clearly posted "No Trespassing" sign across the driveway and Plaintiff's repeated warning that they stop their trespassing and invasion of his privacy. After committing their criminal trespasses and invasion of Plaintiff's privacy at a house in Knowles Island Plantation, Defendants Horton and

Ulbrich left a gate unlocked by damaging the latch. Plaintiff Sun lost several expensive tools left on the property because the metal gate was damaged by Defendants' trespass causing it to be malfunctioned and could not be locked for several days.

9.

Based on the numerous lies and false statements made by Defendant Horton in his Guardian Report, Plaintiff Sun's minor daughter Abigail was moved to Virginia away from all her friends, toys, a home and neighborhood that she loved and most of all, her father with whom she was very close to. Defendant Horton's unethical and malicious acts have caused both Plaintiffs Sun and his minor daughter Abigail to suffer depression, anxiety and mental distress. Plaintiff Sun believed in Defendant Horton's calculated false promise and statement of neutrality, in the end, suffered monetary damages, mental distress and anxiety because his beloved daughter was also put in distress and being deprived of a good and happy home.

10.

Plaintiff Sun is entitled to recover from Defendants Horton and Ulbrich, jointly and severally actual damages of \$500.00 in the repair of the metal gate and \$1,500.00 in the loss of tools and equipments because Defendants Horton and Ulbrich had damaged the gate and left it unlocked for several days. Plaintiff Sun is entitled to recover from Defendants Horton and Ulbrich, jointly and severally, special damages of \$10,000.00 for their criminal trespassing of Plaintiff's private working place and home and the invasion of Plaintiff Sun's privacy. Plaintiffs Sun and minor daughter Abigail are entitled to recover from Defendant Horton special damages of \$100,000.00 in their suffering of anxiety, depression and emotional distress caused by Horton's fraudulent and malicious report full of lies and fabricated statements. In addition, the Plaintiffs are

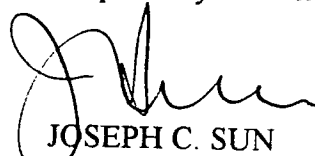
entitled to recover from Defendants Horton and Ulbrich, jointly and severally, punitive damages of \$100,000.00 to punish these defendants and deter them from any further such wrong doing.

Wherefore, Plaintiff Joseph Sun, as Father of minor daughter Abigail Sun and himself, prays the court to award them the following as itemized:

- (1) A trial by jury in this action;
- (2) Actual property damages totaling \$2,000.00 to Plaintiff Sun from both Defendants jointly and severally;
- (3) Special damages of \$10,000.00 to Plaintiff Sun from both Defendants jointly and severally for their repeated criminal trespassing and invasion of his right to privacy;
- (4) Special damages of \$100,000.00 to both Plaintiffs from Defendant Horton due to Mr. Horton's fraudulent and malicious report causing Plaintiff Sun his minor daughter Abigail anxiety, distress, deprivation and depression.
- (5) Punitive damages of \$100,000.00 to both Plaintiffs from both Defendants jointly and severally to punish them and deter them from any further such wrong doing;
- (6) Any other relief that the court may deem just and proper;
- (7) All litigation expenses and any attorney's fees that may incur by the Plaintiff from both Defendants jointly and severally.

This 30th day of January, 2014.

Respectfully submitted,


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

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

JOSEPH C. SUN,)
Plaintiff,)

CASE NO: 2014-CP-07-00238

v.)

AMENDED COMPLAINT

MARSHALL L. HORTON and)
RICHARD ULBRICH,)
Defendant.)

2014 MAR -6 PM 8:04
STATE OF SOUTH CAROLINA
BEAUFORT COUNTY, S.C.
CLERK OF COURT

COMES NOW, PLAINTIFF JOSEPH SUN, pursuant to Rule 15(a) SCRPC, and within
days after service of Defendants responsive pleadings and files his Amended Complaint as follows:

1.

Defendant Marshall L. Horton is a practicing attorney in Beaufort County, South Carolina. Process of service in this case can be perfected on Defendant Horton at his office located at 49 Boundary Street, Second Floor, Bluffton, South Carolina 29910, therefore, he is subject to the jurisdiction of this court.

2.

Defendant Richard Ulbrich is a coconspirator and co-defendant in this case because he conspired with, aided and abetted Defendant Horton in committing several criminal and/or tortuous acts against Plaintiff Sun. Process of Service in this case can be perfected on Defendant Ulbrich at his residence located at 144 Good Hope Road, Okatie, South Carolina 29909, therefore, he is subject to the jurisdiction of this court.

3.

Some time in 2011, Plaintiff Sun visited Defendant Horton at his office in Bluffton, SC regarding a civil suit Sun intended to file. At the end of the interview, Plaintiff decided that

Defendant Horton did not appear to have the experience in those matter therefore expressed his desire to find another lawyer. Defendant Horton was displeased and informed Plaintiff Sun that there was a consultation fee of \$200.00. Plaintiff Sun refused to pay because there was no such understanding prior to the meeting and Defendant Horton had not done anything meaningful for or given Plaintiff any advice. Defendant Horton showed extreme animosity.

FRAUD COMMITTED BY DEFENDANT HORTON

4.

Plaintiffs refer to and incorporate all aforesaid paragraphs in this Amended Complaint as if they are fully set forth herein verbatim.

5.

Near the end of 2011, Defendant Horton was assigned the position of Guardian ad Litem in a Beaufort County Family Court Case No. 2011-DR-07-1823 filed by Plaintiff's ex-wife LiLing Sun seeking change in custody condition in which case Plaintiff Sun was the Defendant. Plaintiff Sun initially raised his objection against the assignment of Marshall Horton as Guardian ad Litem in the Family Court based on his prior encounter with Defendant Horton. Defendant Horton refused to disqualify himself and staved on, falsely claiming he would be fair and neutral. Plaintiff Sun relied on and was misled by Defendant Horton's false pretense and promises therefore allowed Defendant Horton to stay on as Guardian ad Litem in the case.

6.

Defendant Horton is guilty of committing fraud on the Family Court and especially against Plaintiff Sun in pretending that he would be a fair and impartial Guardian ad Litem when in fact he

had already plotted a scheme to injure Plaintiff Sun and his minor daughter, and to defraud money from Plaintiff Sun. Defendant Horton's scheme of fraud was to pretend and make false impression and promise to the court and Plaintiff that he would do a truthful, fair and impartial investigation, evaluation and report regarding the two parties - Plaintiff Sun and his ex-wife, when he had actually plotted to work for Plaintiff's opponent - his ex-wife and her new husband, then use hyperbole and unverified facts to paint a favorable picture for them, while on the other hand, fabricate and/or use unfounded false statements to degrade Plaintiff Sun in his Guardian report as his vengeance against Plaintiff, and to defraud money from Plaintiff with his fabricated Guardian fees.

7.

Defendant Horton misinterpreted and falsely believed that he could rely on the case law of Fleming v. Asbill, 483 S.E.2d 751, 326 S.C. 49 (1997) to commit any crime or wrong against Plaintiff Sun and be immune from all legal actions. Defendant Horton testified under oath in the custody trial on about August 1, 2013 that his fees totaled about \$5,000.00 and that both parties had already paid him a combined \$2,000.00 retainer. After Plaintiff criticized Horton's numerous false and fabricated statements in his Guardian Report. Defendant Horton increased his total fees to about \$9,000.00 after the trial and the case was closed, without any basis or justification, and required Plaintiff to pay the difference. After repeated complaints from Plaintiff. Defendant Horton finally sent Plaintiff some invoice on his guardian fees with no specificity on any work he had done. Defendant Horton had not justified his fee or the increase after the trial. Defendant Horton fabricated numerous charges on his invoice after the Family Court Case was closed.

8.

Based on the numerous lies and false statements made by Defendant Horton in his

Guardian Report, Plaintiff Sun's minor daughter Abigail was moved to Virginia away from all her friends, toys, a home and neighborhood that she loved and most of all, her father with whom she was very close to. Plaintiff Sun believed in Defendant Horton's calculated false promise and statement of fairness and neutrality, in the end, suffered monetary damages because he had to pay Defendant Horton for fabricated charges. Plaintiff is also put in distress because his daughter has been deprived of a comfortable and happy home. Plaintiff filed a fee dispute at the South Carolina State Bar and started paying the Guardians fee according to the term specified by the Beaufort County Family Court. Plaintiff's fee dispute was dismissed on the ground of lack of jurisdiction that Defendant Horton was not hired by Plaintiff. Plaintiff is entitled to recover all fabricated and unjustified charges he paid to Defendant Horton.

HARASSMENT AND CRIMIINAL TRESPASSING

9.

Plaintiffs refer to and incorporate all aforesaid paragraphs in this Amended Complaint as if they are fully set forth herein verbatim.

10.

Defendants Horton and Ulbrich began their harassment by conspiring to stalk Plaintiff and criminally trespass Plaintiff's residence and private working site, and repeatedly peep into Plaintiff's home and take numerous photographs with the pretense of service of certain paper regarding the fee after the Family Court case was closed. Defendants Horton and Ulbrich's outrageous acts had caused Plaintiff and his family in fear and distress, and their privacy invaded by these defendants.

11.

Defendants Horton and Ulbrich conspired to commit their criminal trespassing by ignoring the clearly posted "No Trespassing" sign on a metal gate across the driveway and Plaintiff's repeated warning that they stop their trespassing and invasion of his privacy. After committing their criminal trespasses and invasion of Plaintiff's privacy at a house in Knowles Island Plantation, Defendants Horton and Ulbrich left a gate unlocked by damaging the latch. Plaintiff Sun lost several expensive tools on the property because the metal gate was damaged by Defendants' trespass causing it to be malfunctioned and could not be locked for several days.

12.

Plaintiff Sun is entitled to recover from Defendants Horton and Ulbrich, jointly and severally actual damages of \$200.00 in the repair of the metal gate and \$1,500.00 in the loss of tools and equipments because Defendants Horton and Ulbrich had damaged the gate and left it unlocked for several days. Plaintiff Sun is entitled to recover monetary damages from Defendant Horton for the difference of the amount he actually paid Defendant Horton and the truthful and justifiable charges for the service done by Horton. Plaintiff Sun is entitled to recover from Defendants Horton and Ulbrich, jointly and severally, special damages of \$10,000.00 for their criminal trespassing of Plaintiff's private working place and home and the invasion of Plaintiff Sun's privacy. Plaintiff Sun is entitled to recover from Defendants Horton and Ulbrich, jointly and severally, punitive damages to punish these defendants and deter them from any further such wrong doing.

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

- (1) A trial by jury in this action;
- (2) Actual damage of about \$2,000.00 or the difference between the fabricated charges

- demanded by and paid to Defendant Horton, and the actual truthful and justifiable charges.
- (3) Actual property damages caused by the defendants totaling \$1,700.00 to Plaintiff Sun from both Defendants Horton and Ulbrich jointly and severally;
 - (4) Special damages of \$10,000.00 to Plaintiff Sun from both Defendants jointly and severally for their repeated criminal trespassing of his home and private work place and invasion of his right to privacy;
 - (5) Punitive damages from both Defendants jointly and severally to punish them and deter them from any further such wrong doing;
 - (6) Any other relief that the court may deem just and proper;
 - (7) All litigation expenses and any attorney's fees that may incur by the Plaintiff from both Defendants jointly and severally.

This 5th day of March, 2014.

Respectfully submitted,



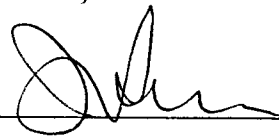
JOSEPH C. SUN
P. O. Box 151
Bluffton, SC 29910
843-227-0963

2014 MAR -6 PM 4:04
JOSEPH C. SUN
BLUFFTON COUNTY, S.C.
CLERK OF COURT

CERTIFICATE OF SERVICE

This is to certify that I have this date served the defendants a copy of this Amended Complaint by depositing a copy of same in the U.S. Mail to:
Marshall Horton, Esq., P. O. Box 3766, Bluffton, SC 29910

This 5th day of March, 2013.



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2014-CP-07-0238

JOSEPH SUN, as Father of Minor)
Child ABIGAIL SUN, as well as for) NOTICE OF MOTION AND MOTION TO
himself,) DISMISS UNDER RULE 12(b)(6) AND
MOTION FOR SANCTIONS

Plaintiff,

vs.

MARSHALL HORTON and
RICHARD ULBRICH,

Defendant.

14 FEB 12 PM 3:15
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: PLAINTIFF JOSEPH SUN:

PLEASE TAKE NOTICE that the Defendants Marshall Horton and Richard Ulbrich, by and through their undersigned attorneys, hereby moves this Court on the tenth day after service, or as soon as can be heard, for an Order of this Court striking the Plaintiff's Complaint.

This motion to dimiss is being made on three (3) grounds:

(1) The allegations in this case arise solely from Mr. Horton's serving as court appointed Guardian *ad Litem* in Mr. Sun's recent Beaufort County Family Court Action titled *Liling Xie Sun v. Joseph C. Sun*, Case No. 2011-DR-07-1823. Mr. Ulbrich is named only on account of his serving Mr. Sun with Court paperwork. As such, Mr. Horton (and his agent Mr. Ulbrich) are immune from the claims brought in this suit because under South Carolina law, private Court appointed Guardian *ad Litem*s absolute quasi-judicial immunity. *Fleming v. Asbill*, 483 S.E.2d 751, 326 S.C. 49 (S.C. 1997).

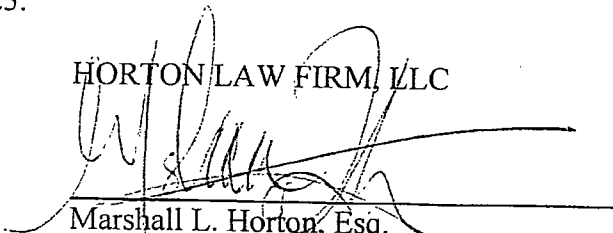
(2) Even in the event that Mr. Horton (and his agent Mr. Ulbrich) didn't enjoy immunity, the facts stated by Mr. Sun do not constitute any cause of action recognized in South Carolina.

(3) Under no circumstances does Mr. Sun state a claim against Mr. Ulbrich. Mr. Ulbrich is alleged to have served Mr. Sun with a Rule to Show Cause signed by the Honorable Judge Judy L. McMahon, nothing further. These facts cannot sustain a legal cause of action.

In support of this Motion, Defendants will rely on Rule 12(b)(6), SCRPC, relevant statutory and case law, and reserves the right to file further Memorandum of Law that may be presented at the hearing of this Motion.

The motion for sanctions in the form of the attorneys' fees and costs associated with this motion is made under the South Carolina Frivolous Claims Civil Proceedings Act, S.C. Code Ann. § 15-36-10 and Rule 11, SCRPC. Mr. Sun's intention in this lawsuit is simply to harass and injure Mr. Horton and Mr. Ulbrich for their carrying out their duties in the Beaufort County Family Court Action titled *Liling Xie Sun v. Joseph C. Sun*, Case No. 2011-DR-07-1823.

HORTON LAW FIRM, LLC


Marshall L. Horton, Esq.
Lindsay Y. Goodman, Esq.
49 Boundary Street, 2nd Floor
Post Office Box 3766
Bluffton, South Carolina 29910
(843) 757-6190
(843) 757-6191 - fax
ATTORNEYS FOR THE DEFENDANTS

Bluffton, South Carolina
This 10th day of February, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)

JOSEPH C. SUN,)
Plaintiff,)

CASE NO: 2014-CP-07-00238)

v.)

MARSHALL L. HORTON and)
RICHARD ULBRICH,)
Defendant.)

AFFIDAVIT OF JOSEPH SUN

2014 MAY 12 PM 3:16
JENNIFER ANN ROSEBAUM
CLERK OF COURT
BEAUFORT COUNTY S.C.

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. I am of sound mind and competent to testify.

2.

All my allegations in my Amended Complaint filed on March 6, 2014 are true and correct to the best of my knowledge and ability. Particularly, as I allege in Paragraph 7 of my Amended Complaint, Mr. Marshal Horton informed the Family Court at the end of the trial that his fees totaled \$5,000.00. Mr. Horton has not done any more work after the trial. On appeal, I have ordered the transcript of the trial in Beaufort Family Court Case No. 2011DR0701823, but it will not be ready until May 25, 2014, to prove that Mr. Horton testified to the \$5,000.00 fee.

3.

Because of the surreptitious increase of his fees after the Family Court Case had already ended, and that I know Mr. Horton had not done his job or written a truthful report, he did not deserve the fees he charged. The legal process for me to do was to pay his unjust and fraudulent

fees first and file this within complaint to address the wrongs Mr. Horton has committed and the damages I suffered, to avoid any charge of contempt of court.

4.

Because Mr. Horton testified that his fee was \$5,000.00, the Family Court Judge heard that amount at the trial and issued an Order on September 3, 2013 requiring the parties to pay that amount. There is no evidence to show that Beaufort Family Court has approved any amount more than \$5,000.00. In a subsequent hearing on Rule to Show Cause filed by Marshal Horton, I was not present due to failure to communicate between my Counsel Ken Tootle and me, the issue of the fee discrepancy was not raised and was irrelevant. Subsequent to the Rule to Show Cause hearing, a different Family Court judge merely entered an Order requiring me to pay pursuant to the aforesaid Family Court Order of September 3, 2013 which Mr. Horton had increased to about \$9,000.00 without any justification or approval from the court. But the new Family Court judge did not know the original amount testified by Mr. Horton in the trial.

5.

A fee dispute filed by me was dismissed for lack of jurisdiction because Mr. Horton was not my counsel. No other court has ever heard or ruled on the surreptitious unjust fee increase made by Mr. Horton. This is the reason I allege fraud committed by Mr. Horton in hiding his surreptitious fee increase and hoping to defraud money from me undetectable by the court. I have suffered damages caused by the fraud committed by Mr. Horton. Family Court has no jurisdiction to hear any matter on personal damages which can only be heard in the circuit court.

6.

I did not know Defendant Richard Ulbrich until one day at the Knowles Island home, he

ignored the clearly posted "No Trespassing" sign, forced the gate open and sneaked in. The Knowles Island House has a 4 acre lot and an 800 feet driveway. There was a metal gate which was always closed, with a "No Trespassing" sign clearly posted so that no unauthorized persons could come in. (See photo Exhibit 1.)

7.

On a certain day in early 2014, I was at the back of the house doing some work, I saw a man walking around uninvited and unauthorized. He was looking at different parts of the house and making comments on how nice it was, and taking numerous photographs. He asked if the house was for sale. I told him it was not for sale and that he must leave immediately or I would call police. I told him there was a "No Trespassing" sign and he was guilty of criminal trespassing. After making numerous comments on the house and the neighborhood, details I cannot remember, this man insisted on approaching and handed me some papers which turned out to be a Rule to Show Cause in the aforesaid Beaufort Family Court case.

8.

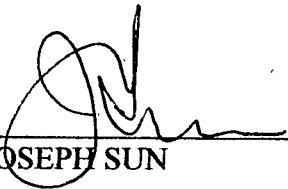
Later that day when I left the house, I passed by the metal gate and found out it had been forced open and damaged. I could not close it back, so I had to let it stay unlocked. I also lived in a house in Bluffton sometimes and I can remember seeing that same man ringing the door bell and peeping inside my Bluffton home numerous times. It is my policy to never answer or open the door to anyone I don't know, not even the uniformed police unless they have a warrant. Therefore, I ignored his door bell. After he gave me the papers by criminally trespassing my home and invading my right to privacy, I knew his name was Richard Ulbrich and that he acted under instruction from Defendant Horton.

9.

I had to stay in my Bluffton home for several days due to certain personal business. I could not repair the broken metal gate caused by Defendant Ulbrich until I returned several days later when I found out several tools were stolen. The stolen items were: a new gasoline operated Pressure Washer, a used lawn mower, a new 20 foot heavy ½ in. Logging chain, and some other tools which I have not identified because the basement of my Knowles Island home was full of tools and other valuable items. (See photo Exhibit 2.) It is hard and time consuming for me to examine the entire basement to determine what was stolen. It is that reason that I always left the posted "No Trespassing" metal gate closed and locked so no one can come in lawfully.


10.

As of this date I have not received any service copy of Defendants' affidavits pursuant to order of the court on April 23, 2014, and I have no information on who are their counsels on record. There were two counsels at the April 23, 2014 hearing. But they have not filed their Notices of Appearance. I do not have any information on them or know if they are temporary or not. Therefore, I can only assume that on record it still is Mr. Horton.



JOSEPH SUN

Sworn and subscribed to before me
this 12 day of May, 2014



NOTARY PUBLIC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2014-CP-07-0238
)	
JOSEPH C. SUN,)	
)	
Plaintiff,	)	RICHARD ULBRICH'S AFFIDAVIT IN
	)	SUPPORT OF MOTION TO
vs.	)	DISMISS/MOTION FOR SUMMARY
	)	JUDGMENT
MARSHALL L. HORTON AND)	
RICHARD ULBRICH,)	
)	
Defendants.)	
_____)	

The undersigned, being first duly sworn, states as follows:

1. My name is Richard Ulbrich, the Defendant in this action, and I have personal knowledge of all facts contained in this affidavit and can testify truthfully to those facts if called upon as a witness under oath.
2. I, Richard F. Ulbrich, was requested by the Law firm of Marshall Horton, Bluffton, SC, to serve process of legal papers on a certain Joseph Sun, who had a given address on 6th Ave., Bluffton, SC.
3. I had been advised by the Law Firm, that Mr. Sun was an extremely difficult individual to serve, and that the Sherriff's office had failed to serve him. I am usually hired by law firms in Beaufort County on more difficult assignments for process serving as I am also a Private Investigator.
4. After numerous attempts at the Bluffton residence where Mr. Sun refused to answer the door, although he was home, I was able to develop through other investigation techniques that

Mr. sun had another home located in a remote part of Ridgeland SC and that he goes there often to work on this home.

5. On Friday, January 10, 2014 I proceeded to this other location along with Leslie Devine to assist me and be a witness to serving Mr. Sun.

6. I found his home to be located on a dead end road in a remote area with a marshland located behind it. The home was about 75 yards or so off the road and was accessible by an apparent driveway that went through a wooded area and came out at the 2 story residence that appeared to be under some type of renovation or repair as there were various construction materials and tools around.

7. As we approached the home, an unidentified black male was getting into a pickup truck who yelled over to Mr. Sun that he had visitors. Mr. Sun acknowledged him and he proceeded to drive out the driveway we had just entered. There was a gate at Mr. Sun's driveway entrance but this gate was already open as the other visitor had pulled his truck through the driveway and exited the same way. I did not touch the gate Mr. Sun refers to in his Complaint- I did not need to move the gate to enter his driveway.

8. As we approached the house and Mr. Sun, suddenly turned and walked thru the under portion of the home and I saw him come out the rear side and head into the woods. I called over to Mr. Sun by his first name.

9. Mr. Sun returned and angled towards the stairway, apparently to try to evade service.

10. I angled between him, introduced myself and produced paperwork from a box I was carrying and he took the documents. He then read the documents and became extremely agitated and started to tell me that I was trespassing and that I was not allowed to serve him there. He

asked how I found him, told me even the police were not allowed without a warrant, told me that he would sue me and told me I was only allowed to serve him at the 6th Avenue, Bluffton address. However, at no point did Mr. Sun ask me to leave his property.

11. Frequently in my profession I take pictures of the individual I have served as additional proof I have served the correct person. In this case I took two digital photographs with my cell phone clearly showing it was him and he was holding the papers I just served him, these pictures are attached as "Exhibit A".

12. Before leaving I shook Mr. Sun's hand and wished him the best as I always do. Ms. Devine and myself turned and exited the premises the way we entered, via the driveway which is apparently the only access to the property.

13. Ms. Devine was with me the entire time during the service of Mr. Sun and can testify to the same.

14. The same evening I sent an email to attorney Marshall Horton verifying Mr. Sun was served, with a copy of the 2 photographs and a few of the remarks made by him.

15. I was subsequently named in a lawsuit in this matter by Mr. Sun causing me to incur attorney's fees for defending myself over false claims by Mr. Sun.

16. I have reviewed the Complaint and Amended Complaint filed by Mr. Sun against me for Harassment and Criminal Trespassing. I will briefly address the allegations made in this Complaint.


17. The Complaint alleges that I have repeatedly stalked Mr. Sun at his residence and work site. The only time I was on either of his residences were the times I discussed above. After he did not answer at his Bluffton address I left without disturbing anything at his home. After

serving Mr. Sun at his Ridgeland address I left also without disturbing anything at his home or "work site."

18. At no point did I come into contact with any members of Mr. Sun's family during either attempt to serve Mr. Sun.

19. At no point did I see a "No Trespassing" sign on a metal gate across Mr. Sun's driveway nor did Mr. Sun ever ask me to leave his property prior to serving him. Once I served him I promptly left.

20. At no point did I ever come into any type of contact with a gate at Mr. Sun's residence. As previously stated I did see a gate that was already open because Mr. Sun had another visitor at his Knowles Island Plantation/Ridgeland home when Ms. Divine and I arrived.



RICHARD ULBRICH

Subscribe to and sworn before me
This 10th day of May, 2014

Colleen D. Standard
Notary Public for South Carolina
My commission expires: 11-13-22



-27-




STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2014-CP-07-0238
)	
JOSEPH C. SUN,)	
)	
Plaintiff,	)	LESLIE DEVINE'S AFFIDAVIT IN
	)	SUPPORT OF MOTION TO
vs.	)	DISMISS/MOTION FOR SUMMARY
	)	JUDGMENT
MARSHALL L. HORTON AND)	
RICHARD ULBRICH,)	
)	
Defendants.)	
)	

The undersigned, being first duly sworn, states as follows:

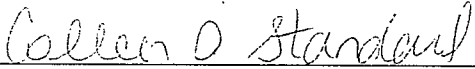
1. My name is Leslie Devine, and I have personal knowledge of all facts contained in this affidavit and can testify truthfully to those facts if called upon as a witness under oath.
2. I was requested by Richard Ulbrich to assist as a witness while he served process of legal papers on Joseph Sun.
3. On Friday, January 10, 2014 I rode with Mr. Ulbrich to Mr. Sun's residence in Knowles Island Plantation/Ridgeland.
4. We found his home to be located on a dead end road in a remote area with a marshland located behind it. The home was about 75 yards or so off the road and was accessible by an apparent driveway that went through a wooded area and came out at the two story residence that appeared to be under some type of renovation or repair as there were various construction materials and tools around.

5. As we approached the home, an unidentified black male was getting in to a pickup truck and yelled over to Mr. Sun that he had visitors. Mr. Sun acknowledged him and he proceeded to drive out the driveway we had just entered.
6. As we approached the house and Mr. Sun, he suddenly turned and walked thru the under portion of the home and I saw him come out the rear side and head into the woods. Mr. Ulbrich called over to Mr. Sun by his first name.
7. Mr. Sun returned back appeared to be attempting to evade service.
8. Mr. Ulbrich introduced himself and produced the paperwork from a box he was carrying and Mr. Sun took the documents. He then read them and became extremely agitated and started yelling at us. However, at no point did Mr. Sun ask us to leave his property. At this point we turned and exited the premises the way we entered, via the driveway which is apparently the only access to the property.
9. I was with Mr. Ulbrich the entire time during the service of Mr. Sun and I have reviewed his affidavit signed and dated May 16, 2014. It is accurate and truthful as to what occurred that day.
10. I am aware that Mr. Sun has sued Mr. Ulbrich as a result of serving him.
11. I have reviewed the Complaint and Amended Complaint filed by Mr. Sun against Mr. Ulbrich for Harassment and Criminal Trespassing. I will briefly address the allegations made in this Complaint.
12. At no point did we come into contact with any members of Mr. Sun's family during either attempt to serve Mr. Sun.

13. At no point did I see a "No Trespassing" sign on a metal gate across Mr. Sun's driveway nor did Mr. Sun ever ask us to leave his property prior to Mr. Ulbrich serving him. Once he was served we promptly left. I do not even recall seeing a metal gate that day.


LESLIE DEVINE

Subscribe to and sworn before me
This 10th day of May, 2014


Notary Public for South Carolina
My commission expires: 11-13-22

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JOSEPH C. SUN,
Plaintiff,

v.

MARSHALL L. HORTON and
RICHARD ULBRICH,
Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) 2014 MAY 27 PM 4:19

) CASE NO: 2014-CP-07-00238
) BEAUFORT COUNTY, S.C.
) CLERK OF COURT.

)
) PLAINTIFF'S RESPONSE IN
) OPPOSITION TO DEFENDANTS'
) MOTION FOR SUMMARY JUDGMENT
)

PLAINTIFF JOSEPH SUN, had previously filed an objection to defendants' affidavits on the ground that after defendants' motion to dismiss was converted to a motion for summary judgment at a hearing before Circuit Judge Marvin Duke, Master in Equity, all defendants were given more time to file their affidavits after Plaintiff Sun had already filed his "Counter Affidavit" within the 20 days as ordered by the court. The requirement of Plaintiff the non-movant to file his counter-affidavit before the defendants' the movants affidavits is in violation of Rule 56, SCRPC. Furthermore, Defendants' motions for summary judgment must be denied because they have not shown they have pierced Plaintiffs allegations, nor have they negated any genuine issues of material facts which remain to be tried by a jury.

The defendants have committed several irregularities and confusion in this case in that after exchanging email addresses at the hearing, Plaintiff received certain emails regarding defendants' extension of time to file affidavits, but not any order regarding the extension from the court prior to Defendants filing their belated affidavits by their "counsels" who have not filed any Notices of Appearance. Plaintiff continues receipt of certain service copies from Defendants' counsel on record Marshal Horton. Plaintiff has no information as to who are the counsels or their mailing addresses in this case. On record, it is still Mr. Horton.

All Defendants' Motion for Summary Judgment should be denied because regardless of their violation of Rule 56, SCRPC, they have not negated any genuine issues which require a trial.

Genuine issues of material facts remain to be tried by a jury are:

- a/ Defendant Horton testified in the trial that his Guardian fees totaled \$5,000.00 and the Family Court Judge approved that amount and incorporated in her order as Guardian fee to be paid by the parties. (See Affidavit of Plaintiff Sun, Para. 2, filed on May 12, 2014.)
- b/ Defendant Horton surreptitiously and fraudulently added \$4,000.00 to his guardian fees after he had already terminated all his work, and without any justification or documentation (Mr. Horton has no statement to show) and without the knowledge of the court.¹
- c/ Defendant Horton then hired Defendant Ulbrich to trespass Plaintiff's two residences, to intimidate and harass Plaintiff for money, by searching his residences, taking numerous photographs, peeping through doors and windows knowing there were several "No Trespassing" signs on both properties (see copies of photographs attached with affidavits).
- d/ Defendant Horton's fraud in his guardian fees, conspiracy to harass Plaintiff and trespass his properties and invade Plaintiff's privacy caused Plaintiff damages and personal injury.
- e/ Defendant Ulbrich under the instruction of Defendant Horton trespassed Plaintiff Sun's two residences numerous times by ignoring the clearly posted "No Trespassing" signs, invaded Plaintiff's right to privacy, and destroying Plaintiff's property and causing Plaintiff

¹ It is important to note that in Defendant Horton's affidavit submitted in support of his motion to dismiss/motion for summary judgment, Para. 6, Page 2 of 3, says "At trial, I testified regarding my fees. No party objected my guardian fees, nor has either party sought to have these fees altered or amended." Defendant Horton skillfully omitted the amount of \$5,000.00 in his affidavit and covered up the truth that no party objected to his testimony of \$5,000.00 fee. Then he surreptitiously and fraudulently increased it to \$9,000.00 by fraud against Plaintiff.

Defendant Horton cannot falsely testify that trial judge approved his fraudulent \$9,000.00 fee, as the trial transcript would prove that he is guilty of perjury.

to suffer monetary damages in repair cost and loss of equipments.

f/ Defendant Ulbrich was warned of his illegal trespass and was told to leave on numerous occasions by Plaintiff, but continued and insisted on his trespass and harassment to accomplish his goal of service of process on Plaintiff, after taking numerous photographs, inspecting the house and property and causing damages to the metal gate.

g/ The Family Court Judges were unaware of Defendant Horton's fraud, his surreptitious and fraudulent increase of the Guardian fees in Suns' Custody case. Defendant Horton made a fraudulent representation in this case that the judge approved his fee (approval was for \$5,000.00, not \$9,000.00) and that there was no objection from the parties after he had covered up his surreptitious and fraudulent increase from \$5,000.00 to \$9,000.00. Record in the custody case can show that the judge approved his \$5,000.00 fee and no one had objected to that amount. Now Defendant Horton fraudulently claims that the approval and no objection was on his \$9,000.00, which is false.

h/ Any damages and injury suffered by Plaintiff and his child proximately caused by Defendants Horton and Ulbrich cannot be addressed in the Family Court, but must be litigated in the Circuit Court. *Thompson v. Ballentine*, 298 S.C. 289, 379 S.E.2d 896.

Furthermore, Defendants' motions for summary judgment should not be granted, until after Plaintiff has completed his discovery pursuant to Rule 26, SCRPC. *Baughman v. American Telephone and Telegraph Company*, 306 S.C. 101, 410 S.E.2d 537. There are numerous covered up facts on the fees charged by Defendant Horton, the trespassing and damage of Plaintiff's property committed by Defendant Ulbrich. Plaintiff Sun's Affidavit and Supplemental Affidavit are conflicting to both Defendants' affidavits, therefore, precluding summary judgment. *Smith v.*

Willard, 287 S.C. 122, 337 S.E.2d 239, S.C.App.,1985.

Wherefore, as Plaintiff has his right to pretrial discovery and file his "Counter Affidavit" to Defendants' affidavits, that none of the Defendants has pierced Plaintiff's allegations, and most of all, Defendants have not shown that they have negated any genuine issues of material facts which remain to be determined by a jury, Defendants' motions for summary judgment must be denied.

This 24th day of May, 2014.

Respectfully submitted,



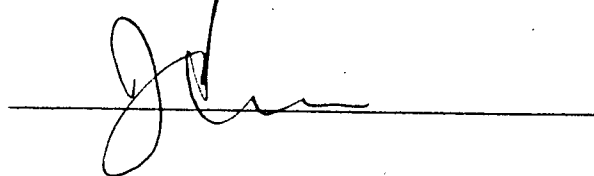
JOSEPH C. SUN, pro se
P. O. Box 151
Bluffton, SC 29910
843-227-0963

CERTIFICATE OF SERVICE

This is to certify that I have this date served the defendants a copy of Plaintiff's Response in Opposition to Defendants Motion for Summary Judgment by depositing a copy of same in the U.S. Mail or hand delivery to the office their counsel on record in this case:

Marshall Horton, Esq., P. O. Box 3766, Bluffton, SC 29910

This 27th day of May, 2014.





- Inbox (9999+)
- Drafts (63)
- Sent
- Spam (1472)
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 - Computer
 - Computer Re... (2)
 - Detective (8)
 - Evil - Ugly
 - Financial (3)
 - Fun and Entertainment
 - Home Constr... (9)
 - Insurance (7)
 - Investments
 - Knowles (25)
 - Legal (169)
 - medical and Health
 - Notes
 - Payments Re... (44)
 - Personal (3)
 - Real Estate (2)
 - Sisters (2)
 - Travel (7)
 - TV

Sun v. Horton and Ulbrich; 2014-CP-07-238(18)

I object to a "short Order". I ask for an Order detailing finding of facts and conclusion of law for the purpose of appeal. Because I have not been given time or opportunity to object to a "short order" and all communication from the court and parties in this case has been by way of email, I intend to submit this email as my record of objection.

On May 27, 2014, I filed my Response in Opposition to Defendants' Motion for Summary Judgment and Counter Affidavit (Supplemental Affidavit) pursuant to Rule 56, SCRPC. Because I filed it at about 4 p.m. the judge's office was closed and I could not take a copy to the chamber.

Thank you for your consideration.

Joseph C. Sun

On Thursday, May 29, 2014 4:10 PM, "McLeod, Heather" <hmcLeod@bcgov.net> wrote:

To All:

Please review the below from Judge Dukes on his ruling. The Order can be emailed to me, preferably in word format, copying all parties.

Dear Counsel and Mr. Sun, I have considered the Motion in 14-238.

With regard to Mr. Horton, I grant the dismissal as requested in the motion and memo. With regard to Mr. Ulbrich, his role as a process server is unclear from the four corners of the Complaint, but is clarified from the affidavit. With regard to Mr. Ulbrich, I grant summary judgment as he acted as the GAL's agent.

I would appreciate it if the Defendant's atty could draft a short Order.

Best to all,

Marvin H. Dukes, III

Please contact us immediately if you are waiting on a ruling and it has been more than 30 days.

If you have a motion older than 30 days, needing a hearing, please email me a filed copy and I will work with you on scheduling. Please note, there may be jurisdiction or conflict issues resulting in Judge Dukes' inability to hear a motion.

Thanking You In Advance,

Heather R. H. McLeod,
Judicial Assistant to
Hon. Marvin H. Dukes, III
Beaufort County Master in Equity
And Special Circuit Court Judge
P. (843) 255-5710
F. (843) 255-8505

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Buying Selling (4)

Cars - Insurance

Cell phone re... (1)

Computer

Computer Re... (2)

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Evil - Ugly

Financial (3)

Fun and Entertainment

Home Constr... (9)

Insurance (9)

Investments

Knowles (41)

Legal (189)

medical and Health

Notes

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Sun v. Horton and Ulbrich; 2014-CP-07-238 (17)

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Josie Gunn

May 29, 2014

To McLeod, Heather, Greg Galvin
CC Marshall L. Horton, Esq., Lindsay Y. Goodman, Esq.

It has just been brought to mind that I need to object to all this line of email communication and attaching filed documents for the judge's consideration when I have only filed hard copies in court and served hard copies to counsel on record. I did not attach any legal documents in email or bring any copies to the Judge's chamber because I was not informed that that was a requirement in this case.

I am now attaching everything I filed since the last hearing just to be sure. Again, I make this objection on record to preserve it on appeal. I am an old fashioned man (or an old man too) 30 years ago when I litigated in court, paper documents was all we had. SCRPC has no provision for email documents. Sorry I missed out.

Here are the attachments.

Joseph C. Sun

Hide original message

Email address Joseph Sun

On Thursday, May 29, 2014 6:30 PM, Josie Gunn <jossunn1095@yahoo.com> wrote:

I object to a "short Order". I ask for an Order detailing finding of facts and conclusion of law for the purpose of appeal. Because I have not been given time or opportunity to object to a "short order" and all communication from the court and parties in this case has been by way of email, I intend to submit this email as my record of objection.

On May 27, 2014, I filed my Response in Opposition to Defendants' Motion for Summary Judgment and Counter Affidavit (Supplemental Affidavit) pursuant to Rule 56, SCRPC. Because I filed it at about 4 p.m. the judge's office was closed and I could not take a copy to the chamber.

Thank you for your consideration.

-37-

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- Smart Views
- Important
- Unread
- Starred
- People
- Social
- Travel
- Shopping
- Finance
- Folders (335)
 - Air Tickets
 - Buying Selling (4)
 - Cars - Insurance
 - Cell phone re... (1)
 - Computer
 - Computer Re... (2)
 - Detective (8)
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 - Real Estate (2)
 - Sisters (2)
 - Travel (9)
 - TV
 - Unwanted

Sun.v. Horton and Ulbrich; 2014-CP-07-238 (17)

People ★

Lindsay Y. Goodman, Esq. May 13, 2014 ★

To hmcleod@bcgov.net
CC jossunn1095@yahoo.com, ggalvin@galvinlawgroup.com

Good afternoon.

Pursuant to a Motion to Dismiss heard before Judge Dukes on April 23, 2014 the Defendants were to have their Affidavits to the Plaintiff and Judge Dukes by this afternoon. My client, Richard Ulbrich, had planned on being in my office today to complete his affidavit and submit it to the court, however, he is currently stuck in New Jersey due to plane delays. I am requesting additional time to complete and submit the affidavits to the Court. Additionally, I have talked with Greg Galvin, attorney for Marshall Horton, and he would like additional time to submit the Mr. Horton's affidavit so that they can all be submitted at one time.

Please let me know if you have any questions regarding this matter.

Thanks,

Lindsay Y. Goodman, Esq.
Horton Law Firm, LLC
49 Boundary Street, Second Floor
Post Office Box 3766
Bluffton, South Carolina 29910
843.757.6190
843.757.6191 (facsimile)
www.hortonlawfirmllc.com

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McLeod, Heather May 14, 2014 ★

To Lindsay Y. Goodman, Esq.
CC jossunn1095@yahoo.com, ggalvin@galvinlawgroup.com

The Judge is fine with the extension. How much time is needed?

Please contact us immediately if you are waiting on a ruling and it has been more than 30 days.

if you have a motion older than 30 days, needing a hearing, please email me a filed copy and I will work with you on scheduling. Please note, there may be jurisdiction or conflict issues resulting in Judge Dukes' inability to hear a motion.

Thanking You in Advance,

**Heather R. H. McLeod,
Judicial Assistant to
Hon. Marvin H. Dukes, III
Beaufort County Master In Equity**

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
JOSEPH C. SUN,)
Plaintiff,)
v.)
MARSHALL L. HORTON and)
RICHARD ULBRICH,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-07-00238

PLAINTIFF'S OBJECTION TO
DEFENDANTS' AFFIDAVITS

2014 MAY 12 PM 3:17
JERRY ANN ROBERTSON
BEAUFORT COUNTY
CLERK OF COURT
S.C.

At the hearing on April 23, 2014, presiding Judge Marvin Duke, Master in Equity, initially required affidavits from all parties to be served and filed in 10 days after Defendants' motion to dismiss had been converted to one for summary judgment. After Plaintiff made his request due to his difficulty in locating his witness, Judge Duke allowed Plaintiff 20 days to file his affidavit. With permission from the court, Plaintiff left when the opposing counsels were still in the chamber. It was Plaintiff's understanding that the hearing had ended and Defendant Counsels were also leaving, that he was allowed 20 days while the Defendants Counsels were allowed the original 10 days to file affidavits. Following the provisions of Rule 56, SCRPC, Plaintiff the non-movant, should be allowed more time to file his affidavit after he is served with Defendant the movant's affidavit. Plaintiff is now required to file his "counter affidavit" the same time as the Defendants or without first knowing what Defendants' claims are.

After 18 days, as of this date, Plaintiff has not received any service copy of Defendants affidavits, therefore, Plaintiff is now assuming that the court also allowed them 20 days to file and serve their affidavit which is inconsistent with the rule of summary judgment, and the extension from 10 days to 20 days was given after Plaintiff had already left the chamber with the

permission of the court on April 23, 2014. Plaintiff was deprived the opportunity to object.

SCRCP, Rule 56 provides that

“(c) Motions and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing.

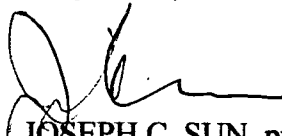
(e) When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. ”

Defendant’s motion to dismiss was converted to one for summary judgment without following the time and date requirement provided in Subsection (c), and Subsection (e) clearly indicates that after “a motion for summary judgment is made” the adverse party may file his “response, by affidavit” to show that there is genuine issue for trial. Plaintiff the non-movant should not be required to file his “response” before he is served with Defendants’ motion for summary judgment.

For the foregoing reasons, Defendants’ affidavits if filed should be disregarded by the court, or in the alternative, Plaintiff be allowed to file an additional “counter affidavit” as provided by Rule 56, SCRCP.

This 10th day of May, 2014.

Respectfully submitted,



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



EXHIBIT 2



EXHIBIT 1

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

JOSEPH C. SUN,)
Plaintiff,)

v.)

MARSHALL L. HORTON and)
RICHARD ULBRICH,)
Defendant.)

IN THE COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)

CASE NO: 2014-CP-07-00238)

SECOND SUPPLEMENTAL)
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 am of sound mind and competent to testify. I make this affidavit based upon my personal knowledge to furnish the record of testimony of Defendant Marshall Horton and the increased amount he claimed in his Rule to Show Cause. (See excerpts of the trial transcript, Exhibit A, and a copy of the Rule to Show Cause filed by Mr. Horton, Exhibit B, attached.)

2.

Attached excerpt of transcript (Page 417) shows Mr. Horton had calculated his Final GAL bill and reported to the Family Court that prior to the last day of trial his total fees and costs were \$5,944.40. Including the two day trial, his total fees were \$7,381.90. (Page 417, line 22.) After his testimony, Mr. Horton left the Family Court and his work had terminated. Mr. Horton did not file or serve a detailed invoice on his time spent and charges made on his job as Guardian prior to the last hearing. After my objection and the Rule to Show Cause hearing, I received a copy of the summary of his charges to Plaintiff's counsel as shown in Exhibit C.

3.

In his Rule to Show Cause, Mr. Horton increased his total fees to \$8,507.90 (\$6,507.90 + \$2,000.00 already paid to him by both parties) and that I still owed him \$3,253.95 of which I had paid \$600.00 by installment. At the hearing on the Rule to Show Cause, the trial transcript had not been prepared and was not available. Defendant Horton had not presented any explanation or documentation to justify his original fees of \$7,381.90 or the increase from \$7,381.90 to \$8,507.90. Until I received the transcript of trial, I could only rely on my memory that Mr. Horton testified that his fees totaled about \$5,000.00. I could not recall if that amount included the time for the last day of trial. Mr. Horton still has not given me a detailed statement on his hourly charges spent on everything he did as Guardian. He had only come by my Bluffton house 4 times for about 10-15 minutes each time and the Guardian Report. I am entitled to know how he can justify to charge me one half (1/2) of the \$8,507.90 which amount appeared for the first time in the Rule to Show Cause he filed.

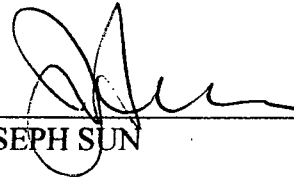
4.

It is obvious from the invoice summary Exhibit C, Mr. Horton spent by far most of his time and effort on ex-wife LiLing and her new husband (his witness). This civil action is the only vehicle I can use to question Mr. Horton's unjust fees and the biased and improper work he did in the family court case, and the surreptitious increase. The fee dispute I filed with the South Carolina State Bar was dismissed based on lack of jurisdiction because Mr. Horton was not my attorney. I have the right to show that Mr. Horton has caused me damages and injury, and to seek recovery. No judge or court has ever approved his fee of \$8,507.90 and this within case is the only action allowing the issue of fee dispute to be heard.

2

-43-

Further affiant sayeth not.



JOSEPH SUN

Sworn and subscribed to before me
this 30 day of June, 2014



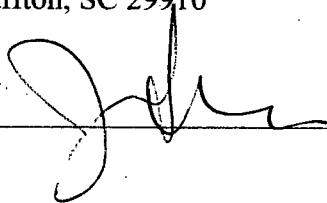
NOTARY PUBLIC

CERTIFICATE OF SERVICE

This is to certify that I have this date served the defendants a copy of this Second Supplemental Affidavit of Joseph Sun and attached exhibits by depositing a copy of same in the U.S. Mail or hand delivery to their counsel on record in this case:

Marshall Horton, Esq., P. O. Box 3766, Bluffton, SC 29910

This 30th day of June, 2014.



2014 JUN 30 PM 1:27
CLERK OF COURT

ORIGINAL

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT)
3 LILING SUN,)
4 PLAINTIFF,)
5 VS.)
6 JOSEPH SUN,)
7 DEFENDANT.)
8 _____)

IN THE FAMILY COURT
CASE NO.: 2011DR0701823

TRANSCRIPT OF RECORD
VOLUME THREE

July 31, 2013
Beaufort, South Carolina

10 B E F O R E:

11 THE HONORABLE JUDY L. MCMAHON, JUDGE

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

14 J. Samuel Scoville, Esquire
15 Attorney for the Plaintiff

16 Kenneth L. Tootle, Esquire
17 Attorney for the Defendant

18 Marshall L. Horton, Esquire
19 Guardian ad Litem

22 Deborah A. Anderson
23 Family Court Reporter

24 -A-
25

1 MR. TOOTLE: I'll object to that.

2 THE COURT: Uh, I'm gonna sustain it as to the terminology.

3 Q Okay, um, I'll rephrase the question. In that instance, Mrs. Walsh, um, in hindsight,
4 improved upon the circumstances of Abigail's life, did she not?

5 A It worked out. It worked out well, so I would assume that the answer to that would
6 be, yes.

7 MR. SCOVILLE: No further questions, your Honor.

8 THE COURT: Any brief recross?

9 MR. TOOTLE: I have nothing on recross, your Honor.

10 REDIRECT EXAMINATION BY THE COURT:

11 Q Any, uh, issues that you want to put on the record, now, about any expenses, um, and
12 your GAL bill? Is that part of the record?

13 A Um . . .

14 Q And each - - and each side's payments towards that and what's owing?

15 A Yes, your Honor. The both - - both parties' have paid a thousand dollars towards the
16 - - towards the, uh, GAL fees, so there's two thousand dollars that have been paid. Um,
17 I provided the - - the parties with the accounting of - - of time. There's virtually no expense
18 in this case, um, which I'd be happy to give the time as of January 29th and, your Honor,
19 with some quick math I could basically tell you to the second what the final fee is.

20 Q Okay, that would - - wouldn't you - - I think we need to put that on the record so if
21 there are any questions: Could you do that?

22 A Your Honor, may - - -

23 Q Just take a break and go ahead and do that.

24 A It's right down here.

25 MR. SCOVILLE: I could hand up the, um . . .

1 (Whereupon, Mr. Horton is calculating his final GAL bill.)

2 A Your Honor, I've provided to the parties an accounting of my time beginning in
3 March of 2012, uh, to July 29th, which would have been after the first day of trial. Um, the
4 total accounting of, uh, time would have been forty-nine point four hours, um, and one
5 dollar and ninety cents of costs. Um, my normal hourly rate for guardian ad litem work is a
6 hundred and twenty-five dollars an hour, which - - which will have meant that, um, prior to
7 yesterday the total fees and costs would be five thousand, nine hundred and forty-four
8 dollars and forty cents.

9 Q I'm sorry, say that again.

10 A Five nine four four and forty cents.

11 Q And does that take into consideration the, um, the two thousand or is the two
12 thousand to be, um, deducted from that?

13 A The two thousand to be deducted from that. It's not in consideration of payments
14 made. Your Honor, I can - - I can basically estimate - - -

15 Q What about your time today?

16 A The time yesterday - - -

17 Q Yesterday and today.

18 A - - - would be seven hours. Seven hours yesterday, so eight seventy five, and then
19 say four and a half hours today at five six two fifty, which would bring the total to seven
20 thousand, three hundred and eighty-one dollars and ninety cents.

21 Q Slow down. It's seven thousand what?

22 A Seven three eight one and ninety cents.

23 THE COURT: Any questions?

24 MR. SCOVILLE: None, your Honor.

25 THE COURT: In terms of your - - -

1 MR. TOOTLE: None from us, your Honor.

2 THE COURT: Anything further?

3 A Uh, no, your Honor. Would you like the, uh, accounting?

4 Q Yes, would you mark that as an exhibit.

5 A I will circle this. Your Honor, and I - - I'd ask that I be excused so I can go.

6 THE COURT: Yes, just I want to be sure. Anything further?

7 MR. SCOVILLE: Nothing, your Honor.

8 MR. TOOTLE: Nothing further, your Honor.

9 THE COURT: And my condolences. And he's excused.

10 (Whereupon, the fees and costs of the guardian ad litem, consisting of 7 pages, was
11 marked as Guardian ad Litem Exhibit Number "2" and entered into evidence.)

12 MR. HORTON: Thank you, Judge.

13 (Whereupon, the guardian ad litem, Mr. Horton, left the courtroom.)

14 THE COURT: Alright, I think the next issue, then, would be for the attorney's - -
15 have attorney's fee affidavits and those can be marked and introduced as exhibits.

16 MR. SCOVILLE: Well, your Honor, I would move to strike a portion of Mr.
17 Tootle's affidavit. He's - - -

18 THE COURT: Let me get them in first - - -

19 MR. SCOVILLE: Sorry.

20 THE COURT: - - - and then we'll see if there's any objection to them, but let her
21 mark them.

22 COURT REPORTER: So these are coming into evidence, correct?

23 THE COURT: Yes, they will be entered by both as an exhibit for each side as
24 appropriate.

25 MR. TOOTLE: You sit down. I've got to pay attention.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE FAMILY COURT FOR THE
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2011-DR-07-1823

LILING XIE SUN,
Plaintiff,

)
) RULE TO SHOW CAUSE
)
)

vs.

JOSEPH C. SUN,
Defendant.

2013 NOV - 8 AM 11:41
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

TO: JOSEPH C. SUN, THE PLAINTIFF ABOVE NAMED:

Based upon the attached Affidavit, it appears that you have not obeyed a certain Court Order, as described in the Affidavit.

THEREFORE, IT IS ORDERED THAT you appear before the Beaufort County Family Court located at the Multi-Government Center, 102 Ribaut Road, Beaufort, South Carolina on the 28 day of Jan. 2014, 2013 at 11:30 A. M. then and there to be prepared to show cause, if any, why the relief requested in the Affidavit should not be granted and why you should not be held in contempt of court for such disobedience.

AND IT IS FURTHER ORDERED THAT service of this Rule to Show Cause shall be made by service upon the Petitioner by means allowable under Rule 4(d), of the South Carolina Rules of Civil Procedure.

Judy L. McMahon
Family Court Judge
for the Fourteenth Judicial Circuit

Nov. 8, 2013
Beaufort, South Carolina

Certified - A True Copy
Jean A. Resseau
Clerk of Court
Beaufort County SC

-B-

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE FAMILY COURT FOR THE
) FOURTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2011-DR-07-1823

LILING XIE SUN,

Plaintiff,

vs.

JOSEPH C. SUN,

Defendant.

)
) AFFIDAVIT IN SUPPORT OF RULE TO
) SHOW CAUSE FOR NON-PAYMENT OF
) GUARDIAN *AD LITEM* FEES

FILED
2013 OCT 10 AM 10:00
CLERK OF COURT
1400 W. BROAD ST.
COLUMBIA, SC 29201

The undersigned, being first duly sworn, states as follows:

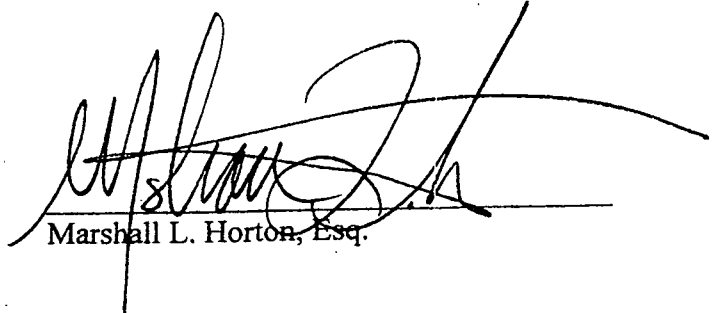
1. My name is Marshall L. Horton, I am the appointed Guardian *ad Litem* in this child custody action and I have personal knowledge of all facts contained in this affidavit and can testify truthfully to those facts if called upon as a witness under oath.

2. After a multi-day trial, this Court issued a final Order on this matter signed on September 3, 2013 resolving all issues in this case. The final Order from that trial is attached as "Exhibit A."

3. No party objected to the Guardian fees presented, nor has either party sought to have these fees altered or amended.

4. Pursuant to the attached Order, both parties were responsible for half of the Guardian *ad Litem* fees within thirty days of the Order. Both parties were presented with the final bill of the Guardian and both parties were to pay half of \$6,507.90 (or \$3,253.95 a party) through their attorneys on September 28, 2013. Mr. Sun was sent additional correspondence through his attorney on October 3, 2013 regarding this fee.

5. Liling Sun paid her share of the Guardian fees. Joseph Sun has refused.
6. I have attempted to have this addressed without the necessity of a Rule to Show Cause, but to no avail.
7. I am seeking the Court's assistant in compelling Mr. Sun to pay \$3,253.95.
8. As a matter of notice to Mr. Sun, I would ask that the Court consider the following sanctions for his willful contempt of the Order dated September 3, 2013: one (1) year in jail to coerce compliance or six (6) months in jail to punish, up to a One Thousand Five Hundred (\$1,500.00) Dollar fine and up to three hundred (300) hours of community service. I also ask that this Court take whatever actions deemed necessary under the circumstances to address the willful violations.



Marshall L. Horton, Esq.

Subscribe to and sworn before me
This 5 day of November, 2013

Brittany Corni
Notary Public for South Carolina
My commission expires: 4-23-2023

THE HORTON LAW FIRM, LLC

INVOICE

49 Boundary Street, 2nd Floor, P.O. Box 3766
Bluffton, SC 29910
Phone: 843.757.6190
Fax: 843.757.6191
www.hortonlawfirmllc.com

Invoice # 1277
Date: 09/16/2013
Due On: 10/01/2013

Ms Abigale Sun

2011-DR-07-1823-ii-XIE

Xie v. Sun

Attorney	Date	Description	Time	Rate	Total
MH	12/11/2012	Guardian ad Litem (ii): Prep for and home visit to Joe Sun's home.	0.90	\$125.00	\$112.50
MH	12/12/2012	Guardian ad Litem (ii): Home visit with Liling in Beaufort.	3.20	\$125.00	\$400.00
CS	07/10/2013	Guardian ad Litem (ii): Email to Attorney Scoville regarding setting up time for Mr. Horton to visit Ms. Sun and Abigal.	0.20	\$50.00	\$10.00
CS	07/11/2013	Guardian ad Litem (ii): Left voice message for Attorney Scoville. No charge.	0.00	\$50.00	\$0.00
MH	07/12/2013	Guardian ad Litem (ii): Phone call to Attorney Scoville, finalize plan for trial.	1.10	\$125.00	\$137.50
MH	07/23/2013	Guardian ad Litem (ii): Phone call with Mr. Sun, phone calls to witnesses, meeting with Ms. Sun in Fort Mill, SC.	8.50	\$125.00	\$1,062.50
MH	07/24/2013	Guardian ad Litem (ii): Phone calls to witnesses, draft Guardian report. Home visit with Mr. Sun and Abigail.	4.60	\$125.00	\$575.00
MH	07/25/2013	Guardian ad Litem (ii): Phone calls to witnesses, draft Guardian report. Phone calls with counsel.	1.40	\$125.00	\$175.00
MH	07/26/2013	Guardian ad Litem (ii): Finalize GAL report, phone calls with counsel. Review depositions, review entire file for trial. (Bill reduced 3 hours).	2.10	\$125.00	\$262.50
MH	07/28/2013	Guardian ad Litem (ii): Review file, prepare for tomorrow's trial.	0.30	\$125.00	\$37.50
MH	07/29/2013	Guardian ad Litem (ii): File review, trial in Beaufort County Family Court.	9.50	\$125.00	\$1,187.50

-C-

MH	07/30/2013	Guardian ad Litem (ii): Trial in Beaufort County Family Court.	6.10	\$125.00	\$762.50
MH	07/31/2013	Guardian ad Litem (ii): Trial in Beaufort County Family Court.	8.00	\$125.00	\$1,000.00
MH	08/01/2013	Guardian ad Litem (ii): Trial in Beaufort County Family Court.	4.50	\$125.00	\$562.50
MH	08/05/2013	Guardian ad Litem (ii): Address issues regarding closing of home.	0.30	\$0.00	\$0.00
MH	08/30/2013	Guardian ad Litem (ii): Phone conference to receive ruling on case.	1.10	\$125.00	\$137.50
MH	09/03/2013	Guardian ad Litem (ii): Meeting with Judge in Charleston for Final Order. (all travel deducted).	0.50	\$125.00	\$62.50
CS	09/04/2013	Guardian ad Litem (ii): Travel to Beaufort County Family Court to file Order.	1.00	\$50.00	\$50.00
MH	09/04/2013	Guardian ad Litem (ii): Ensure Order filed and sent to all parties.	0.20	\$125.00	\$25.00

Quantity Subtotal 53.5

Firm Member	Position	Time	Rate	Total
Marshall Horton	Attorney	52.0	\$125.00	\$6,500.00
Marshall Horton	Attorney	0.3	\$0.00	\$0.00
Colleen Standard	Non-Attorney	1.2	\$50.00	\$60.00
Quantity Total		53.5		

Subtotal \$6,560.00

Total \$6,560.00

Payment (09/16/2013) -\$52.10

Payment (10/03/2013) -\$3,253.93

Payment (01/21/2014) -\$300.00

Balance Owning \$2,953.97

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) CIVIL ACTION NO.: 2014-CP-07-0238

JOSEPH SUN, as Father of Minor)
Child ABIGAIL SUN, as well as for)
himself,)

Plaintiff,)

vs.)

MARSHALL HORTON and)
RICHARD ULBRICH,)

Defendant.)

ANSWER AND COUNTERCLAIM

TO: PLAINTIFF JOSEPH SUN:

COME NOW Defendant Marshall Horton and Richard Ulbrich (hereinafter referred to as "Defendants"), by and through their counsel, file this Answer to Complaint and Counterclaim, pursuant to the South Carolina Rules of Civil Procedure. Any allegations not specifically admitted, explained, or modified herein are denied.

AS A FIRST DEFENSE
(General Denial)

1. Defendant admits the allegations in Paragraph 1.
2. Defendant denies the allegations in Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 10 and demands strict proof thereof.

-54-

AS A SECOND DEFENSE
(Failure to State a Claim – Guardian *ad Litem* Absolute Quasi-Judicial Immunity)

3. Defendant incorporates herein all of the paragraphs of this Answer and Counterclaim as if more fully set forth at length herein.
4. Plaintiff's Complaint is based upon Defendant Marshall Horton's actions as a Court appointed Guardian *ad Litem*. Defendant Richard Ulbrich is included in this action only for his actions while as Mr. Horton's process server.
5. In South Carolina, private Court appointed Guardian *ad Litem*s absolute quasi-judicial immunity. *Fleming v. Asbill*, 483 S.E.2d 751, 326 S.C. 49 (S.C. 1997).

AS A THIRD DEFENSE
(Failure to State a Claim)

6. Defendant incorporates herein all of the paragraphs of this Answer and Counterclaim as if more fully set forth at length herein.
7. The Complaint, in whole or in part, should be dismissed pursuant to Rule 12(b)(6), SCRCPP, for failure to state a claim against the Defendants. The facts as alleged in the Complaint do not state an actionable claim or support a theory of recovery against the Defendants as a matter of law.
8. Even without the absolute quasi-judicial immunity that the Defendants enjoy, Plaintiff still has not set forth claims that lay the elements of any recognizable cause of legal action.

AS A FOURTH DEFENSE
(Unclean Hands)

9. Defendant incorporates herein all of the paragraphs of this Answer and Counterclaim as if more fully set forth at length herein.

10. To the extent that Plaintiff's claims are considered equitable, Plaintiff's claims are barred in whole or part by the doctrine of unclean hands.

AS A FIFTH DEFENSE AND COUNTERCLAIM
(Frivolous Claims)

11. Defendant incorporates herein all of the paragraphs of this Answer and Counterclaim as if more fully set forth at length herein.

12. The Plaintiff brings this lawsuit as an attempt to harass, intimidate, and otherwise harm Marshall Horton, the Court appointed Guardian *ad Litem* in the now finalized Beaufort County Family Court Action titled *Liling Xie Sun v. Joseph C. Sun*, Case No. 2011-DR-07-1823.

13. In this case, Mr. Horton was first approached by Jim Berl, Esq. to serve as Guardian. Mr. Berl was Mr. Sun's attorney at the time. There was no objection to Mr. Horton serving as GAL despite the disclosed fact that Mr. Sun had previously visited Mr. Horton for a consult on an unrelated matter.

14. Mr. Horton conducted his duties as Guardian to the best of his abilities and in compliance with the South Carolina Private Guardian *ad Litem* statute. No party ever objected to his serving, there was never any motion to remove the Guardian, and no misconduct is alleged by Mr. Sun on the part of the Guardian in Mr. Sun's motion for reconsideration after the July 2013 trial of his case. As opposed to being biased against Mr. Sun, as Mr. Sun now alleges, Mr. Horton actually submitted an affidavit *in support* of one of Mr. Sun's motions to prevent his ex-wife from leaving the Beaufort County area. Furthermore, Mr. Horton's Final Guardian *ad Litem* report repeatedly stresses the strong and positive emotional bond Mr. Sun and his daughter enjoy.

15. Mr. Sun was recently the subject of a Rule to Show Cause, hearing heard on January 28, 2014, with the honorable Judge Timothy H. Pogue presiding on account of his failing to pay Guardian *ad Litem* fees.

16. Much of the Plaintiff's complaint concerns his unhappiness with being served with the Rule to Show Cause referred to above. Incredibly, Mr. Sun claimed that he had not been served with Rule at the January 28th hearing, although he now brings a civil lawsuit in retaliation for being served.

17. Mr. Sun is no stranger to lawsuits. Upon information and belief, Mr. Sun has filed approximately six (6) civil lawsuits in Beaufort County, approximately two (2) in Jasper County, and approximately five (5) in Federal Court.

18. Mr. Sun has stated, in writing to Mr. Horton, that he is unhappy with Mr. Horton's Guardian *ad Litem* report and that it is the basis of this unhappiness that he will sue Mr. Horton.

19. No reasonable attorney in the same circumstances would believe that the facts of this case constitute a cause of action under existing law, nor is there any argument that the facts of this case justify a change in the law.

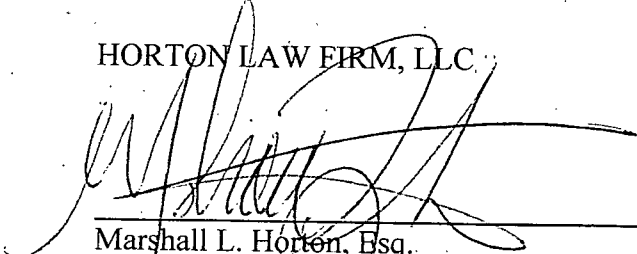
20. No reasonable attorney presented with the same circumstances would believe anything other than that the initiation of this case was intended to do anything other than merely to harass or injure the Defendants.

WHEREFORE, the Defendant, having fully answered the Complaint, pray that this Court:

A. Dismiss said Complaint with prejudice;

- B. Awarding judgment against the Plaintiff and in favor of the Defendant under their Counterclaims for actual, incidental, consequential, and special damages as shown by the evidence;
- C. Awarding sanctions as permitted by law;
- D. Awarding the Defendants reasonable attorneys' fees;
- E. Granting the Defendants such other legal and equitable relieve as this court shall deem just and proper.

HORTON LAW FIRM, LLC



Marshall L. Horton, Esq.
Lindsay Y. Goodman, Esq.
49 Boundary Street, 2nd Floor
Post Office Box 3766
Bluffton, South Carolina 29910
(843) 757-6190
(843) 757-6191 - *fax*
ATTORNEYS FOR THE DEFENDANTS

Bluffton, South Carolina
This 10th day of February, 2014

1 several criminal and tortious acts against Plaintiff
2 Sun in which he basically says in his own complaint
3 that Mr. Ulbrich is an agent of Mr. Horton and wants
4 damages as -- you know, because of that.

5 So to the extent that Marshall Horton
6 would enjoy a quasi judicial immunity for his duties
7 from the guardian ad litem, Mr. Ulbrich should enjoy
8 those as well.

9 And I believe I've adequately addressed
10 the trespassing issue although I will just state,
11 again that South Carolina code does state that
12 trespassing is anyone without legal cause or good
13 excuse basically to be on the premises. And
14 certainly serving a rule to show cause is a good
15 excuse and certainly is legal cause to be there.

16 JUDGE DUKES: All right.

17 MR. SUN: Well, there is no -- first
18 of all, there is no evidence. And you cannot
19 present evidence in this hearing. There is no
20 evidence to support that there was a legal process
21 or a lawful entry of that private property?

22 JUDGE DUKES: I don't necessarily
23 disagree, which is why as you correctly pointed out,
24 Mr. Sun, I can leave the record open, convert this
25 to a summary judgment, and ask for further pleadings

1 on this matter in the form of affidavits since what
2 you have given me is an unverified complaint.

3 MR. SUN: That's right.

4 JUDGE DUKES: And so what I may do is
5 do just that, get you all to exchange affidavits or
6 other documents including but not limited to the
7 family court documents that are pertinent that I may
8 have already been given, but I might get you to
9 include those in whatever you send me.

10 MR. SUN: So you will give us 30 days
11 to do it, right?

12 JUDGE DUKES: Well, is it going to
13 take 30 days?

14 MS. GOODMAN: Not for us, Your Honor.

15 MR. SUN: That is what the rules --

16 JUDGE DUKES: I don't think the rule
17 says that. I was thinking 10 days.

18 MR. GALVIN: Would you like us just
19 to submit those to the court where the court will
20 review them and determine --

21 JUDGE DUKES: I think that would
22 probably be appropriate. Mr. Sun, how long do you
23 need to write an affidavit?

24 MR. SUN: Because I have to get --
25 there is another witness there, you know, who was on

1 the properties at that time when Mr. -- your
2 Defendant was criminal trespassing. Okay? He is
3 one of those workers who come and go. I have
4 trouble finding him. I have to find him first to
5 get his affidavit. So I don't know if I can do it
6 in 10 days.

7 JUDGE DUKES: Well, I tell you
8 what --

9 MR. SUN: I can do my affidavit in 10
10 days.

11 JUDGE DUKES: Well, why don't I give
12 you 20 days?

13 MR. SUN: All right. Okay.

14 JUDGE DUKES: All right. Because --
15 I mean, I'm not sure what this person will say, but
16 obviously --

17 MR. SUN: He will say that the
18 Defendant was all over the place.

19 JUDGE DUKES: Which Defendant?

20 MR. SUN: The server. I think --
21 this gentleman may be the one. It was kind of dark
22 that day. And I couldn't recognize who it was.

23 JUDGE DUKES: All right.

24 MR. SUN: But he was all over the
25 place. And also, too -- well, okay.

1 JUDGE DUKES: So why don't we do
2 this. It sounds like you all can get me your things
3 and share them within 10 and then happy to hear from
4 Mr. Sun and his response in 20. Of course everyone
5 share what you've got with the others, file a copy,
6 send a copy to me. And I'll tell Heather to be
7 looking for it. And then I will try to get back
8 with you all the moment I get everything in hand.

9 MR. GALVIN: And, Your Honor, since
10 we are converting this to a summary judgment motion,
11 is there a way we can make these prior suits of
12 Mr. Sun a part of the court record?

13 JUDGE DUKES: I still don't know if
14 those are relevant.

15 MR. SUN: That is no purpose because
16 I have case law that says unless they can prove that
17 it is abuse of process or --

18 MS. GOODMAN: I think it would
19 certainly be relevant for the sanctions or attorneys
20 fees part because a lot of those fees have to deal
21 with --

22 MR. SUN: They are no attorneys fees
23 involving this any way because --

24 JUDGE DUKES: Well, why don't we all
25 do this. You all were all talking over one another.

1 Deborah is doing her best down there to keep track
2 of it, but why don't we leave those out. First of
3 all, that is a thick stack that may clutter --

4 MR. SUN: Because I can also come up
5 with a big stack of the other side, too, but I
6 mean --- different things, but the total is
7 irrelevant because how is that -- those -- even if I
8 am a murderer, for instance, I am not --

9 JUDGE DUKES: Well, I already agreed
10 with you, Mr. Sun.

11 MR. SUN: Okay.

12 JUDGE DUKES: So you don't need to go
13 into detail. But all right. So what we are going
14 to do is --

15 MR. SUN: Is this for me?

16 JUDGE DUKES: Well, hold on, Mr. Sun.
17 So 10 days and 20 days, you understand?

18 MR. SUN: Right.

19 JUDGE DUKES: And then I'll take a
20 look at it, consider it as a summary judgment on the
21 amended complaint. And then we will see what we can
22 do. Anything else?

23 MR. GALVIN: Just attorneys fees
24 after we go through the summary judgment and if we
25 do prevail we may try to reintroduce those at that

1 time. We will go ahead and argue that at that time.

2 JUDGE DUKES: Whatever you want to
3 do. That is not for today though.

4 MR. GALVIN: I just want to make
5 sure, put it on the record that I'm not foreclosing
6 my --

7 JUDGE DUKES: Oh, no. No.

8 MR. SUN: Did somebody leave this
9 here for me or --

10 JUDGE DUKES: That may. We've
11 already had several things in here, Mr. Sun. That
12 may have been from another hearing. I don't know.

13 MR. SUN: No, this is Asheville,
14 which is this case?

15 MR. GALVIN: I think that is a copy
16 of the case I gave you.

17 JUDGE DUKES: Oh, okay. I imagine
18 they've given that to you.

19 MR. SUN: Oh, okay. Thank you.

20 JUDGE DUKES: All right. I thank you
21 all very much. This is your copy?

22 MR. SUN: Thank you.

23 MR. GALVIN: Well, can we stay on the
24 record for one second?

25 MS. GOODMAN: I think that was our

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2014-CP-07-0238
)	
JOSEPH C. SUN,)	
)	
Plaintiff,	)	MARSHALL HORTON'S AFFIDAVIT IN
	)	SUPPORT OF MOTION TO
vs.	)	DISMISS/MOTION FOR SUMMARY
	)	JUDGMENT
MARSHALL L. HORTON AND)	
RICHARD ULBRICH,)	
)	
Defendants.)	
_____)	

The undersigned, being first duly sworn, states as follows:

1. My name is Marshall L. Horton and I have personal knowledge of all facts contained in this affidavit and can testify truthfully to those facts if called upon as a witness under oath.
2. This Affidavit is for the purpose of assisting the Court in ruling on my motion for summary judgment. I am being sued by Mr. Joseph Sun for my role as Guardian *ad Litem* in his family court action based in child custody.
3. I was appointed Guardian *ad Litem* in case number 2011-DR-07-1823 by order dated March 20, 2012 y the Honorable Alvin Johnson. This Order is attached hereto as 'Exhibit A.' This Order was by consent of all the parties, and in fact Mr. Sun signed this Order.
4. From March 20, 2012 until September 3, 2013, I performed my duties as Guardian *ad Litem*. Neither party objected to my performing my duties or voiced any concerns regarding the execution of my duties.

5. After a multi-day trial, the Court issued a final Order on case number 2011-DR-07-1823 signed on September 3, 2013 resolving all issues in this case. The final Order from that trial is attached as "Exhibit B."

6. At the trial, I presented my Guardian *ad Litem*'s report, which was presented to the Court. A copy (unlocked) of the Guardian *ad Litem* Report is attached as "Exhibit C."

6. At trial, I testified regarding my fees. No party objected my Guardian fees, nor has either party sought to have these fees altered or amended.

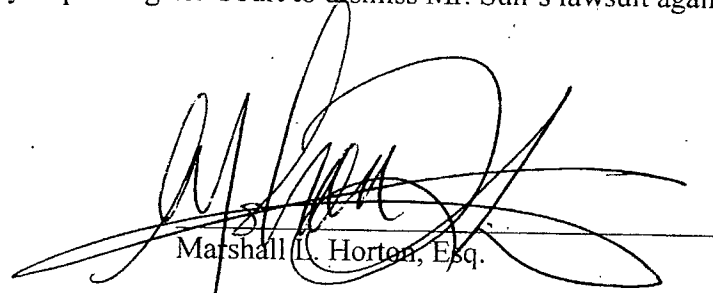
7. Pursuant to the attached Order, both parties were responsible for half of the Guardian *ad Litem* fees within thirty days of the Order. Both parties were presented with the final bill of the Guardian and both parties were to pay half of \$6,507.90 (or \$3,253.95 a party) through their attorneys on September 28, 2013. Mr. Sun was sent additional correspondence through his attorney on October 3, 2013 regarding this fee.

8. Liling Sun paid her share of the Guardian fees. Joseph Sun refused until the Court intervened at a Rule to Show Cause.

9. On February 8, 2014, the Family Court entered an Order on Rule to Show Cause requiring Mr. Sun to pay the remainder of my fees. Mr. Sun has since paid these fees. A copy of the Order on Rule to Show Cause is attached as "Exhibit D."

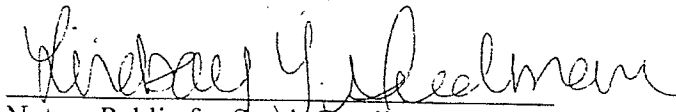
10. Throughout the entire family law case, including the Rule to Show Cause, there has never been an objection to either the execution of my duties as Guardian *ad Litem* or any action contesting my fees. In fact, neither party cross examined me about the reasonableness of my fees at trial nor was I examined about the reasonableness of my fees at the Rule to Show Cause.

11. I am respectfully requesting the Court to dismiss Mr. Sun's lawsuit against me.



Marshall L. Horton, Esq.

Subscribe to and sworn before me
This 16th day of May, 2014



Winifred Y. Dealman
Notary Public for South Carolina
My commission expires: 2/16/22