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**No Respondent's Brief Filed**

**21354**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

**ORIGINAL**

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

S.C.C.A. Case No. 2013 - 000371

Case No. 2011-CP-10-2026

**RECEIVED**

FEB 19 2014

**SC Court of Appeals**

Jerome Myers and Gloria Myers, Appellants,

v.

Dennis J. Christensen, Shelly K. All, Cezar E. McKnight, Sgt. Donald Daquigan,  
Elizabeth Spencer-Elderly Support Unit, Willie O.W. McFadden Myers and Latonya  
Hobson, Defendants,

Of Whom Shelly K. All, Cezar E. McKnight, Willie O.W. McFadden-Myers, and  
Latonya Hobson are the Respondents.

**RECEIVED**

MAY 29 2015

**SC Court of Appeals**

**Amended**

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AUG 01 2014

**SC Court of Appeals**

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Stop. On February 9, 1996, Strom and Bland filed a circuit court action entitled *Collins Entertainment Corporation v. Columbia "20" Truck Stop, Inc., et al*, C/A No. 96-CP-40-0527 ("*Columbia "20"*"). On February 12, 1996, the circuit court issued a temporary restraining order in the case to prevent the sale of Columbia "20" to a third party. On February 20, 1996, prior to the scheduled injunction hearing, the parties entered into a consent order which held the matter in abeyance while Collins negotiated with the third party. Strom alleges he was contacted via telephone by Collins' in-house counsel, Timothy Youmans ("Youmans") in March of 1996, and told to close his file. Youmans and co-counsel Bland deny Strom was relieved of any obligations. Strom claims he closed his file in March and mailed a final bill to Collins in April 1996. Strom contends he has performed no work on the *Columbia "20"* file since that time. It is uncontested, however, that the *Columbia "20"* case remained on the trial docket, with Strom shown as counsel of record, until July 1997. Strom has produced no written documentation of his discharge. However, he has not billed Collins for any work since the *Columbia "20"* action was held in abeyance.

On June 10, 1997, Strom and several other attorneys, filed *Joan Caldwell Johnson, et al. v. Collins Entertainment, Inc. et al.*, C/A No. 3:97-2136-17 (D.S.C.) ("*Johnson*"), a federal class action challenging the legality of the video poker industry in South Carolina. When Strom filed this action against Collins, he was still the attorney of record for Collins in the *Columbia "20"* action. In June 1997, the parties received notice that the *Columbia "20"* case was on the docket for trial during the week of July 8, 1997. However, *Columbia "20"* was dismissed pursuant to Rule 41(a), SCRCP and an executed Stipulation of Dismissal on July 11, 1997, before the case went to trial.

On June 19, 1997, Strom filed a motion requesting that the circuit court delete his name as counsel of record in the *Columbia "20"* action, retroactive to March of 1996. Collins contested the motion, claiming it had not discharged Strom in March of 1996, or anytime thereafter. Following a hearing in August 1997, the Honorable L. Casey Manning issued an order dated August 8, 1997, granting Strom's motion. Judge Manning's Order retroactively relieved Strom as counsel of record pursuant to Rule 60(a), SCRCP, based on clerical mistake. Judge Manning affirmed his findings in a further Order denying Collins' motion for reconsideration. Collins appealed.

The Court of Appeals overturned Judge Manning's Order, holding there was no clerical mistake and that Rule 11(b), SCRCP, is the only proper method for an attorney to withdraw as counsel of record. This Court granted certiorari, and the issues before this Court are:

- I. May Strom raise the principle of estoppel as an additional sustaining ground?
- II. Did the Court of Appeals correctly hold that once an attorney becomes the attorney of record in an action, withdrawal can only be accomplished by order of the court pursuant to Rule 11(b), SCRCP?

## LAW/ ANALYSIS

### I. Estoppel

Strom argues this Court should apply the principle of estoppel as an additional sustaining ground to overrule the Court of Appeals' decision and to uphold the trial court's decision. We disagree.

As discussed below in Section II, there are strong policy reasons which impel us to require strict

adherence to Rule 11. Therefore, we can not allow Strom to interpose estoppel to prevent the enforcement of Rule 11, even if the record indicates Collins did not suffer any prejudice. To allow the use of estoppel in this instance would defeat the strong public policy behind the enforcement of Rule 11.<sup>(1)</sup>

In light of this ruling on the merits, it is not necessary for this Court to address Collins' contention that Strom's estoppel argument was not properly raised as an additional sustaining ground.

## II. Rule 11(b), SCRCP

Strom argues the Court of Appeals erred in holding that an attorney can only be relieved as counsel by obtaining a court order utilizing the procedure set forth in Rule 11(b), and may not retroactively be relieved pursuant to Rule 60(a). We disagree.

Rule 11, SCRCP, provides: "An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of Court, *and not otherwise.*" (emphasis added). We hold that after entering an appearance with the court, an attorney must receive a court order pursuant to Rule 11(b) in order to be relieved as counsel. As this Court stated in *Culbertson v. Clemens*, 322 S.C. 20, 25, 471 S.E.2d 163, 165 (1996):

In all actions, it is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record. The best way to achieve this is by strict adherence to Rule 11(b), which was designed to eliminate any confusion regarding which attorneys are representing parties by requiring that any changes be made by application to the court.

It is irrelevant whether the attorney is discharged or seeks to withdraw for his own reasons. A client has the absolute right to trust and rely upon attorneys whom he believes to be his counsel of record. In the instant case, the only evidence that Strom was discharged by Collins is the testimony of Strom himself and the absence of billing records during a time when the matter was held in abeyance. Contrarily there is evidence that Collins still believed Strom would continue to represent it if and when the case proceeded to trial. As the text of Rule 11(b) implies, either the attorney, the replacement attorney, or the client may apply for a court order changing or removing an attorney. If an attorney is discharged, and the client or the new attorney fails to apply for a court order, it is incumbent upon the discharged attorney to do so himself. In a situation such as this one where the client claims not to have discharged the attorney, strict adherence to Rule 11(b) would have solved the confusion. If Strom had filed a Rule 11(b) motion at the time he believed he was discharged, Collins would have been notified and could have corrected Strom's belief.

Strong policy considerations dictate that a client and the court must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason. Equally strong policy considerations dictate that the court must, by order, approve a client's discharge of an attorney of record in a court proceeding. The conflict in understanding between Collins and Strom in this case is a perfect illustration of the need for adherence to Rule 11's requirement of a court order. Here, Strom and Collins' in-house counsel, Youmans, both testified credibly about their understanding of their telephone conversation. Unfortunately each lawyer interpreted the conversation differently.

We hold that in order to be removed as counsel of record, an attorney must receive a court order

pursuant to 11(b), SCRCP. In a case where an attorney believes he has been discharged, if the client fails to request a court order changing attorneys, the attorney is required to request such an order on his own motion.<sup>(2)</sup> In *Smith v. Bryant*, 141 S.E.2d 303 (N.C. 1965), the North Carolina Supreme Court articulated the policy behind placing such an obligation on an attorney. The Court held that an attorney who has entered a formal appearance in an action is "not at liberty to abandon [the client's] case without (1) justifiable cause, (2) reasonable notice to [the client], and (3) permission of the court." *Id.* at 305. The court explained: "[a]n attorney not only is an employee of his client but also is an officer of the court. This dual relation imposes a dual obligation." *Id.* at 306. Based on case law and policy, once an attorney has made a formal appearance and becomes attorney of record in an action, withdrawal can only be accomplished by order of the court.<sup>(3)</sup>

Since a court order is required to relieve an attorney of record, the trial court erred in relieving Strom pursuant to Rule 60(a), SCRCP. Rule 60(a), SCRCP, provides: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time." Failure to file a motion to be relieved as counsel of record does not amount to a clerical error. A clerical error "is a mistake or omission by a clerk, counsel, judge or printer, *which is not the result of exercise of judicial function.*" *Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994) (emphasis added).

Furthermore, the trial court's order removing Strom as counsel of record should not have been granted *nunc pro tunc*. *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should have been done, with a retroactive effect. *Black's Law Dictionary* 737 (7<sup>th</sup> ed. 1991). *Nunc pro tunc* orders can only be used to place in the record evidence of judicial action that has actually taken place. "A prerequisite for a *nunc pro tunc* order . . . is some previous action by the court that is not adequately reflected in its record." *Deweese v. Sweeney*, 947 S.W.2d 861 (Tenn. Ct. App. 1996), *app. den'd* (1997); *see also Simons v. Atlantic Coast Line R.R. Co.*, 235 F.Supp. 325, 330 (D.S.C. 1964) (*nunc pro tunc* entry cannot be made to serve the office of correcting a decision or of supplying non-action on the part of the court); *Carroll v. Carroll*, 338 S.W.2d 694, 695 (Ky. 1960) ("The error could not be corrected by *nunc pro tunc* order because such an order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, not to correct an error or supply an omission of judicial action."); 20 Am. Jur. *Courts* § 29 (1995) (the order cannot supply the record with action that the court failed to take).

Strom needed a court order under Rule 11(b), SCRCP, to be relieved as counsel. Since such action was not taken, Strom could not be relieved as counsel of record by a *nunc pro tunc* order.<sup>(4)</sup>

## CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals is **AFFIRMED**.

**MOORE, WALLER, BURNETT AND PLEICONES, JJ., concur.**

1. The conduct between the parties is not at issue in this appeal. Although this Court expresses no opinion as to the merits of any subsequent litigation between Collins and Strom, we note nothing in this opinion would prevent Strom from presenting his estoppel argument in a subsequent civil suit.

2. Strom cites *In re Tillman*, 319 S.C. 461, 462 S.E.2d 283 (1995), in support of his argument that a discharged attorney does not have an obligation to file a Rule 11(b) motion. Strom accurately cites *Tillman* for the proposition that an attorney who is discharged can no longer perform work on the client's case. However, requiring an attorney to file a motion to change attorneys under Rule 11(b) does not constitute "continuing representation after discharge."

3. Many other states follow similar rules requiring that attorneys of record, even those who are discharged, can only be relieved as counsel upon filing with the court. See, e.g., *Farkas v. Sadler*, 375 A.2d 960 (R.I. 1977) (effective withdrawal, at the insistence of either counsel or client, is dependent upon consent of the court); *Sweet v. Sweet*, 676 N.Y.S.2d 853 (N.Y. Fam. Ct. 1998) (even after discharge, there are only two ways an attorney who has made an appearance in a case can withdraw: (1) by service on other parties and filing a consent to change attorneys with the court and (2) by motion to the court); *Reddic v. State*, 976 S.W.2d 281 (Tex. Ct. App. 1998) (either the attorney or the client must justify severance of the attorney-client relationship to the trial court); *Dunn v. Duke*, 456 S.E.2d 65 (Ga. Ct. App. 1995) (formal withdrawal by attorney cannot be accomplished until after trial court issues an order permitting withdrawal).

4. There are also strong policy reasons not to allow the circuit court to retroactively relieve a lawyer of all responsibility for things not done during the period of retroactivity. For example, an attorney could fail to file a pleading, to submit discovery when due, or to attend a hearing, and then claim he was absolved of any responsibility for that failure or neglect because a court relieved him as counsel retroactive to a time prior to the misconduct.

**South Carolina  
Judicial Department**

Site Map

2954 - *Strom v. Collins Entertainment Corp.*

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Ex Parte: J.P. Strom, Jr., Respondent.

Collins Entertainment Corp., Appellant,

v.

Columbia "20" Truck Stop, Inc., d/b/a Columbia  
"20" Truck Stop, Vern Adkins and Union Oil  
Company of California, Respondents.

Appeal From Richland County  
L. Casey Manning, Circuit Court Judge

Opinion No. 2954  
Heard November 4, 1998 - Filed March 8,  
1999

**REVERSED**

O.W. Bannister, Jr., and James W. Bannister, both  
of Hill, Wyatt & Bannister, of Greenville, for  
appellant.

Herbert W. Louthian, of Louthian & Louthian;  
Richard M. Gergel and W. Allen Nickles, III, both of  
Gergel, Nickles & Grant, all of Columbia, for  
respondents.

**PER CURIAM:** Collins Entertainment Corporation  
appeals the final order of the circuit court granting  
the motion of its attorney of record, J. P. Strom, Jr.,  
to retroactively relieve him as counsel for Collins in  
its action against Columbia "20" Truck Stop, Inc.  
and others (Columbia "20"). We reverse.

**I. FACTS**

In February 1996, Collins sued Columbia "20". Strom and another attorney filed the complaint on behalf of Collins and, thus, became Collins's attorneys of record in the action. According to Strom, Collins's general counsel informed him in March of 1996 that his involvement in the case was no longer needed. However, neither Collins nor Strom applied to the court for an order relieving Strom as counsel of record.

On June 10, 1997, Strom appeared as one of several counsel who filed a complaint on behalf of Joan Caldwell Johnson and others against multiple defendants, including Collins. Nine days later, Strom filed a motion with the trial court requesting that his name be deleted as Collins's attorney of record nunc pro tunc to April 1996 in Collins's case still pending against Columbia "20".

Collins objected to Strom's motion, arguing Strom remained its attorney in the Columbia "20" case. Collins's general counsel denied relieving Strom of his duties. The Columbia "20" case was then dismissed pursuant to a settlement reached between the parties under Rule 41(a), SCRCP, on July 11, 1997. Strom did not participate in the settlement or the procurement of the order of dismissal.

Despite Collins's objections, the trial court granted Strom's motion to be retroactively relieved under Rule 60(a), SCRCP,<sup>(1)</sup> based on clerical mistake. The order was issued on August 8, 1997. The court found that "Strom was relieved of all duties in this matter as of March 1996 and that 'by oversight or omission' his name was not removed as counsel of record." The trial court ordered that Strom's name be deleted as counsel of record as of March 1996.

The Johnson case was subsequently removed to federal court, where Collins sought to disqualify Strom based in part on the allegation that he still represented Collins in the Columbia "20" case at the time the Johnson suit was commenced, in violation of Rule 1.7 of the Rules of Professional Conduct. See Rule 407, SCACR, Rules of Prof. Conduct, 1.7. Collins's appeal from the trial court's order retroactively removing Strom as attorney of record is now before us.

## II. DISCUSSION

Collins argues the trial court erred in retroactively deleting Strom's name as attorney of record in the Columbia "20" case. We agree.

Rule 60(a), SCRCP, provides in part:

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

In relying upon this rule, the trial court concluded that Strom's representation of Collins in the Columbia "20" case ended as of March 1996 and, therefore, his name appearing as attorney of record was merely a clerical error resulting from an oversight or omission. We conclude this was error.

Rule 60(a) provides the court with a mechanism for correcting clerical errors and mistakes in its judgments, orders, and other parts of the record. "Generally, a clerical error is defined as a mistake in writing or copying." Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994). A clerical error "is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function." Id. The appearance of Strom's name as counsel of record in the Columbia "20" case cannot be considered a clerical error unless he had previously been relieved as Collins's counsel under the manner proscribed by law. Without his prior removal, there was no clerical mistake to correct.

Removal as attorney of record is governed by Rule 11(b), SCRCP. Rule 11(b) states in pertinent part: "An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the Court, and not otherwise." (emphasis added). The language of Rule 11(b) is clear. Once an attorney has made a formal appearance and become attorney of record in an action, withdrawal can only be accomplished by order of the court. Id.; Culbertson v. Clemens, 322 S.C. 20, 471 S.E.2d 163 (1996). A formal appearance by an attorney is most commonly made by the signing of pleadings. Rule 11(a), SCRCP; Culbertson, supra.

The requirement that removal as attorney of record be done only by order of the court is for good reason. As recently noted by our supreme court: "In all actions, it is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record. The best way to achieve this is by strict adherence to Rule 11(b), which was designed to eliminate any confusion regarding

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which attorneys are representing parties by requiring that any changes be made by application to the court." Culbertson, 322 S.C. at 25, 471 S.E.2d at 165.

The circuit court is a court of record. See S.C. Const. art. V, § 20; Love v. Dorman, 91 S.C. 384, 74 S.E. 829 (1912). Records are required to be maintained to "secure an accurate memorial of all the proceedings in the case so that persons interested may ascertain the exact state thereof." 21 C.J.S. Courts § 178 (1990). "The court of common pleas being a court of record and of general jurisdiction, all presumptions are in favor of the regularity of its proceedings and irregularities must be shown." Young v. Brabham, 105 S.C. 62, 89 S.E. 472 (1916). It is generally recognized that "[u]nless the court formally corrects it, the record of a court of record is conclusive evidence of the court's dispositions stated in the record." 20 Am. Jur. Courts § 28; See also Young v. Brabham, 105 S.C. 62, 89 S.E. 472 (1916).

Though the urgency of maintaining the record as to matters such as appearance of counsel may be diminished once the case is dismissed, it is nevertheless important that the integrity of the judicial record be maintained. For this reason, a nunc pro tunc order modifying a record as to representation in a court proceeding is not rendered moot by virtue of the dismissal of the proceeding, even though the matter of representation appears to have no effect on the outcome of the case.

In order to preserve the integrity of the court record, it is generally recognized that a nunc pro tunc order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, and not to correct an error or supply an omission of judicial action. 20 Am. Jur. 2d Courts § 29; Carroll v. Carroll, 338 S.W.2d 694 (Ky. 1960); Harden v. Commonwealth, 885 S.W.2d 323 (Ky. Ct. App. 1994). The court can correct only what was done, not what should have been done.

In this case, Strom had never made a motion to be relieved as attorney of record under Rule 11(b) prior to the motion to be retroactively relieved. Since Strom had never actually been removed as attorney of record pursuant to Rule 11(b), the appearance of his name is not the result of a mistake or omission. To the contrary, in the view of the courts, he remained Collins's attorney of record in the Columbia "20" case until it was

dismissed on July 11, 1997. Consequently, a nunc pro tunc order could not be issued relieving him as of April, 1996.

### III. CONCLUSION

For the foregoing reasons, the trial court's order retroactively deleting Strom's name as attorney of record in this action is

**REVERSED.**

**GOOLSBY, HUFF and HOWARD, JJ., concur.**

1. In its order, the trial court also briefly mentioned Rule 60(b)(1), SCRCP. However, the trial court did not use this rule as a basis for granting Strom's motion.

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**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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Ex Parte: J.P. Strom, Jr., Respondent.

Collins Entertainment Corp., Appellant,

v.

Columbia "20" Truck Stop, Inc., d/b/a Columbia  
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Herbert W. Louthian, of Louthian & Louthian;  
Richard M. Gergel and W. Allen Nickles, III, both of  
Gergel, Nickles & Grant, all of Columbia, for  
respondents.

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**PER CURIAM:** Collins Entertainment Corporation appeals the final order of the circuit court granting the motion of its attorney of record, J. P. Strom, Jr., to retroactively relieve him as counsel for Collins in its action against Columbia "20" Truck Stop, Inc. and others (Columbia "20"). We reverse.

**I. FACTS**

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Collins objected to Strom's motion, arguing Strom remained its attorney in the Columbia "20" case. Collins's general counsel denied relieving Strom of his duties. The Columbia "20" case was then dismissed pursuant to a settlement reached between the parties under Rule 41(a), SCRCP, on July 11, 1997. Strom did not participate in the settlement or the procurement of the order of dismissal.

Despite Collins's objections, the trial court granted Strom's motion to be retroactively relieved under Rule 60(a), SCRCP, based on clerical mistake. The order was issued on August 8, 1997. The court found that "Strom was relieved of all duties in this matter as of March 1996 and that 'by oversight or omission' his name was not removed as counsel of record." The trial court ordered that Strom's name be deleted as counsel of record as of March 1996.

The Johnson case was subsequently removed to federal court, where Collins sought to disqualify Strom based in part on the allegation that he still represented Collins in the Columbia "20" case at the time the Johnson suit was commenced, in violation of Rule 1.7 of the Rules of Professional Conduct. See Rule 407, SCACR, Rules of Prof. Conduct, 1.7. Collins's appeal from the trial court's order retroactively removing Strom as attorney of record is now before us.

## II. DISCUSSION

Collins argues the trial court erred in retroactively deleting Strom's name as attorney of record in the Columbia "20" case. We agree.

Rule 60(a), SCRCP, provides in part:

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

In relying upon this rule, the trial court concluded that Strom's representation of Collins in the Columbia "20" case ended as of March 1996 and, therefore, his name appearing as attorney of record was merely a clerical error resulting from an oversight or omission. We conclude this was error.

Rule 60(a) provides the court with a mechanism for correcting clerical errors and mistakes in its judgments, orders, and other parts of the record. "Generally, a clerical error is defined as a mistake in writing or copying." Dion v. Ravenel, Eiserhardt Assocs., 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994). A clerical error "is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function." Id. The appearance of Strom's name as counsel of record in the Columbia "20" case cannot be considered a clerical error unless he had previously been relieved as Collins's counsel under the manner proscribed by law. Without his prior removal, there was no clerical mistake to correct.

Removal as attorney of record is governed by Rule 11(b), SCRCP. Rule 11(b) states in pertinent part: "An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of the Court, and not otherwise." (emphasis added). The language of Rule 11(b) is clear. Once an attorney has made a formal appearance and become attorney of record in an action, withdrawal can only be accomplished by order of the court. Id.; Culbertson v. Clemens, 322 S.C. 20, 471 S.E.2d 163 (1996). A formal appearance by an attorney is most commonly made by the signing of pleadings. Rule 11(a), SCRCP; Culbertson, supra.

The requirement that removal as attorney of record be done only by order of the court is for good reason. As recently noted by our supreme court: "In all actions, it is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record. The best way to achieve this is by strict adherence to Rule 11(b), which was designed to eliminate any confusion regarding which attorneys are representing parties by requiring that any changes be made by application to the court." Culbertson, 322 S.C. at 25, 471 S.E.2d at 165.

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Though the urgency of maintaining the record as to matters such as appearance of counsel may be diminished once the case is dismissed, it is nevertheless important that the integrity of the judicial record be maintained. For this reason, a nunc pro tunc order modifying a record as to representation in a court proceeding is not rendered moot by virtue of the dismissal of the proceeding, even though the matter of representation appears to have no effect on the outcome of the case.

In order to preserve the integrity of the court record, it is generally recognized that a nunc pro tunc order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, and not to correct an error or supply an omission of judicial action. 20 Am. Jur. 2d Courts § 29; Carroll v. Carroll, 338 S.W.2d 694 (Ky. 1960); Harden v. Commonwealth, 885 S.W.2d 323 (Ky. Ct. App. 1994). The court can correct only what was done, not what should have been done.

In this case, Strom had never made a motion to be relieved as attorney of record under Rule 11(b) prior to the motion to be retroactively relieved. Since Strom had never actually been removed as attorney of record pursuant to Rule 11(b), the appearance of his name is not the result of a mistake or omission. To the contrary, in the view of the courts, he remained Collins's attorney of record in the Columbia "20" case until it was dismissed on July 11, 1997. Consequently, a nunc pro tunc order could not be issued relieving him as of April, 1996.

### III. CONCLUSION

For the foregoing reasons, the trial court's order retroactively deleting Strom's name as attorney of

record in this action is

**REVERSED.**

**GOOLSBY, HUFF and HOWARD, JJ., concur.**

1. In its order, the trial court also briefly mentioned Rule 60(b)(1), SCRCP. However, the trial court did not use this rule as a basis for granting Strom's motion.

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Ex Parte: J. P. Strom, Jr., Petitioner,

In Re: Collins Entertainment Corporation,  
Respondent,

v.

Columbia "20" Truck Stop, Inc. d/b/a Columbia  
"20" Truck Stop, Vern Adkins and Union Oil of  
California, Defendants.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

Appeal From Richland County  
L. Casey Manning, Circuit Court Judge

Opinion No. 25213  
Heard October 5, 2000 - Filed November 20, 2000

**AFFIRMED**

Tom Young, Jr., of Strom & Young, L.L.P., of  
Columbia; and Richard Mark Gergel and W.  
Allen Nickles, III, both of Gergel, Nickles &  
Solomon, P.A., of Columbia, for petitioner.

O. W. Bannister, Jr. and James W. Bannister,  
of Bannister & Wyatt, L.L.C., of Greenville, for  
respondent.

Desa Ballard, of Desa Ballard, P.A., of West  
Columbia, as amicus curiae.

**CHIEF JUSTICE TOAL:** We granted certiorari to review the decision of the Court of Appeals reversing a Circuit Court order which granted J.P. Strom, Jr.'s motion to be retroactively relieved as counsel of record in the captioned matter.

**FACTUAL/ PROCEDURAL BACKGROUND**

Respondent Collins Entertainment Corporation ("Collins") retained Petitioner J.P. Strom, Jr. ("Strom") and Eric Bland ("Bland") to represent it in a contract dispute with Columbia "20"

Truck Stop. On February 9, 1996, Strom and Bland filed a circuit court action entitled *Collins Entertainment Corporation v. Columbia "20" Truck Stop, Inc., et al*, C/A No. 96-CP-40-0527 ("Columbia "20"). On February 12, 1996, the circuit court issued a temporary restraining order in the case to prevent the sale of Columbia "20" to a third party. On February 20, 1996, prior to the scheduled injunction hearing, the parties entered into a consent order which held the matter in abeyance while Collins negotiated with the third party. Strom alleges he was contacted via telephone by Collins' in-house counsel, Timothy Youmans ("Youmans") in March of 1996, and told to close his file. Youmans and co-counsel Bland deny Strom was relieved of any obligations. Strom claims he closed his file in March and mailed a final bill to Collins in April 1996. Strom contends he has performed no work on the Columbia "20" file since that time. It is uncontested, however, that the Columbia "20" case remained on the trial docket, with Strom shown as counsel of record, until July 1997. Strom has produced no written documentation of his discharge. However, he has not billed Collins for any work since the Columbia "20" action was held in abeyance.

On June 10, 1997, Strom and several other attorneys, filed *Joan Caldwell Johnson, et al. v. Collins Entertainment, Inc. et al.*, C/A No. 3:97-2136-17 (D.S.C.) ("Johnson"), a federal class action challenging the legality of the video poker industry in South Carolina. When Strom filed this action against Collins, he was still the attorney of record for Collins in the Columbia "20" action. In June 1997, the parties received notice that the Columbia "20" case was on the docket for trial during the week of July 8, 1997. However, Columbia "20" was dismissed pursuant to Rule 41(a), SCRCP and an executed Stipulation of Dismissal on July 11, 1997, before the case went to trial.

On June 19, 1997, Strom filed a motion requesting that the circuit court delete his name as counsel of record in the Columbia "20" action, retroactive to March of 1996. Collins contested the motion, claiming it had not discharged Strom in March of 1996, or anytime thereafter. Following a hearing in August 1997, the Honorable L. Casey Manning issued an order dated August 8, 1997, granting Strom's motion. Judge Manning's Order retroactively relieved Strom as counsel of record pursuant to Rule 60(a), SCRCP, based on clerical mistake. Judge Manning affirmed his findings in a further Order denying Collins' motion for reconsideration. Collins appealed.

The Court of Appeals overturned Judge Manning's Order, holding there was no clerical mistake and that Rule 11(b), SCRCP, is the only proper method for an attorney to withdraw as counsel of record. This Court granted certiorari, and the issues before this Court are:

- I. May Strom raise the principle of estoppel as an additional sustaining ground?
- II. Did the Court of Appeals correctly hold that once an attorney becomes the attorney of record in an action, withdrawal can only be accomplished by order of the court pursuant to Rule 11(b), SCRCP?

## LAW/ ANALYSIS

### I. Estoppel

Strom argues this Court should apply the principle of estoppel as an additional sustaining ground to overrule the Court of Appeals' decision and to uphold the trial court's decision. We disagree.

As discussed below in Section II, there are strong policy reasons which impel us to require strict adherence to Rule 11. Therefore, we can not allow Strom to interpose estoppel to prevent the enforcement of Rule 11, even if the record indicates Collins did not suffer any prejudice. To allow the use of estoppel in this instance would defeat the strong public policy behind the enforcement of Rule 11.<sup>(1)</sup>

In light of this ruling on the merits, it is not necessary for this Court to address Collins' contention that Strom's estoppel argument was not properly raised as an additional sustaining ground.

## II. Rule 11(b), SCRCP

Strom argues the Court of Appeals erred in holding that an attorney can only be relieved as counsel by obtaining a court order utilizing the procedure set forth in Rule 11(b), and may not retroactively be relieved pursuant to Rule 60(a). We disagree.

Rule 11, SCRCP, provides: "An attorney may be changed by consent, or upon cause shown, and upon such terms as shall be just, upon application, by order of Court, *and not otherwise*." (emphasis added). We hold that after entering an appearance with the court, an attorney must receive a court order pursuant to Rule 11(b) in order to be relieved as counsel. As this Court stated in *Culbertson v. Clemens*, 322 S.C. 20, 25, 471 S.E.2d 163, 165 (1996):

In all actions, it is of vital importance, not only to the parties involved but to the court as well, that the correct attorneys are listed as the attorneys of record. The best way to achieve this is by strict adherence to Rule 11(b), which was designed to eliminate any confusion regarding which attorneys are representing parties by requiring that any changes be made by application to the court.

It is irrelevant whether the attorney is discharged or seeks to withdraw for his own reasons. A client has the absolute right to trust and rely upon attorneys whom he believes to be his counsel of record. In the instant case, the only evidence that Strom was discharged by Collins is the testimony of Strom himself and the absence of billing records during a time when the matter was held in abeyance. Contrarily there is evidence that Collins still believed Strom would continue to represent it if and when the case proceeded to trial. As the text of Rule 11(b) implies, either the attorney, the replacement attorney, or the client may apply for a court order changing or removing an attorney. If an attorney is discharged, and the client or the new attorney fails to apply for a court order, it is incumbent upon the discharged attorney to do so himself. In a situation such as this one where the client claims not to have discharged the attorney, strict adherence to Rule 11(b) would have solved the confusion. If Strom had filed a Rule 11(b) motion at the time he believed he was discharged, Collins would have been notified and could have corrected Strom's belief.

Strong policy considerations dictate that a client and the court must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason. Equally strong policy considerations dictate that the court must, by order, approve a client's discharge of an attorney of record in a court proceeding. The conflict in understanding between Collins and Strom in this case is a perfect illustration of the need for adherence to Rule 11's requirement of a court order. Here, Strom and Collins' in-house

counsel, Youmans, both testified credibly about their understanding of their telephone conversation. Unfortunately each lawyer interpreted the conversation differently.

We hold that in order to be removed as counsel of record, an attorney must receive a court order pursuant to 11(b), SCRCP. In a case where an attorney believes he has been discharged, if the client fails to request a court order changing attorneys, the attorney is required to request such an order on his own motion.<sup>(2)</sup> In *Smith v. Bryant*, 141 S.E.2d 303 (N.C. 1965), the North Carolina Supreme Court articulated the policy behind placing such an obligation on an attorney. The Court held that an attorney who has entered a formal appearance in an action is "not at liberty to abandon [the client's] case without (1) justifiable cause, (2) reasonable notice to [the client], and (3) permission of the court." *Id.* at 305. The court explained: "[a]n attorney not only is an employee of his client but also is an officer of the court. This dual relation imposes a dual obligation." *Id.* at 306. Based on case law and policy, once an attorney has made a formal appearance and becomes attorney of record in an action, withdrawal can only be accomplished by order of the court.<sup>(3)</sup>

Since a court order is required to relieve an attorney of record, the trial court erred in relieving Strom pursuant to Rule 60(a), SCRCP. Rule 60(a), SCRCP, provides: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time." Failure to file a motion to be relieved as counsel of record does not amount to a clerical error. A clerical error "is a mistake or omission by a clerk, counsel, judge or printer, which is not the result of exercise of judicial function." *Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994) (emphasis added).

Furthermore, the trial court's order removing Strom as counsel of record should not have been granted *nunc pro tunc*. *Nunc pro tunc* is a phrase applied to acts allowed to be done after the time when they should have been done, with a retroactive effect. Black's Law Dictionary 737 (7<sup>th</sup> ed. 1991). *Nunc pro tunc* orders can only be used to place in the record evidence of judicial action that has actually taken place. "A prerequisite for a *nunc pro tunc* order . . . is some previous action by the court that is not adequately reflected in its record." *Deweese v. Sweeney*, 947 S.W.2d 861 (Tenn. Ct. App. 1996), *app. den'd* (1997); *see also* *Simons v. Atlantic Coast Line R.R. Co.*, 235 F.Supp. 325, 330 (D.S.C. 1964) (*nunc pro tunc* entry cannot be made to serve the office of correcting a decision or of supplying non-action on the part of the court); *Carroll v. Carroll*, 338 S.W.2d 694, 695 (Ky. 1960) ("The error could not be corrected by *nunc pro tunc* order because such an order can be used only for the purpose of placing in the record evidence of judicial action that has actually been taken, not to correct an error or supply an omission of judicial action."); 20 Am. Jur. *Courts* § 29 (1995) (the order cannot supply the record with action that the court failed to take).

Strom needed a court order under Rule 11(b), SCRCP, to be relieved as counsel. Since such action was not taken, Strom could not be relieved as counsel of record by a *nunc pro tunc* order.<sup>(4)</sup>

## CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals is **AFFIRMED**.

**MOORE, WALLER, BURNETT AND PLEICONES, JJ., concur.**

1. The conduct between the parties is not at issue in this appeal. Although this Court expresses no opinion as to the merits of any subsequent litigation between Collins and Strom, we note nothing in this opinion would prevent Strom from presenting his estoppel argument in a subsequent civil suit.

2. Strom cites *In re Tillman*, 319 S.C. 461, 462 S.E.2d 283 (1995), in support of his argument that a discharged attorney does not have an obligation to file a Rule 11(b) motion. Strom accurately cites *Tillman* for the proposition that an attorney who is discharged can no longer perform work on the client's case. However, requiring an attorney to file a motion to change attorneys under Rule 11(b) does not constitute "continuing representation after discharge."

3. Many other states follow similar rules requiring that attorneys of record, even those who are discharged, can only be relieved as counsel upon filing with the court. See, e.g., *Farkas v. Sadler*, 375 A.2d 960 (R.I. 1977) (effective withdrawal, at the insistence of either counsel or client, is dependent upon consent of the court); *Sweet v. Sweet*, 676 N.Y.S.2d 853 (N.Y. Fam. Ct. 1998) (even after discharge, there are only two ways an attorney who has made an appearance in a case can withdraw: (1) by service on other parties and filing a consent to change attorneys with the court and (2) by motion to the court); *Reddic v. State*, 976 S.W.2d 281 (Tex. Ct. App. 1998) (either the attorney or the client must justify severance of the attorney-client relationship to the trial court); *Dunn v. Duke*, 456 S.E.2d 65 (Ga. Ct. App. 1995) (formal withdrawal by attorney cannot be accomplished until after trial court issues an order permitting withdrawal).

4. There are also strong policy reasons not to allow the circuit court to retroactively relieve a lawyer of all responsibility for things not done during the period of retroactivity. For example, an attorney could fail to file a pleading, to submit discovery when due, or to attend a hearing, and then claim he was absolved of any responsibility for that failure or neglect because a court relieved him as counsel retroactive to a time prior to the misconduct.

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Floree Hooper, as Personal Representative of the Estate of Albert L. Clinton,  
Deceased, Petitioner,

v.

Ebenezer Senior Services and Rehabilitation Center, Respondent.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

Appeal from York County  
S. Jackson Kimball, III, Circuit Court Judge

Opinion No. 26748  
Heard September 17, 2009 - Filed December 14, 2009

**REVERSED AND REMANDED**

John S. Nichols, of Bluestein, Nichols, Thompson & Delgado, of Columbia,  
and Robert V. Phillips, of McGowan, Hood, Felder & Johnson, of Rock Hill, for  
Petitioner.

R. Gerald Chambers and R. Hawthorne Barrett, both of Turner, Padgett,  
Graham & Laney, of Columbia, for Respondent.

**JUSTICE BEATTY:** Floree Hooper ("Hooper"), acting as Personal Representative of the Estate of Albert L. Clinton, brought this action alleging claims for wrongful death and survival against Ebenezer Senior Services and Rehabilitation Center ("Ebenezer"). The trial court granted summary judgment in favor of Ebenezer, finding the claims were untimely asserted. The South Carolina Court of Appeals affirmed. Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008). This Court granted Hooper's petition for a writ of certiorari. We now reverse and remand.

## **I. FACTS**

The facts, in the light most favorable to Hooper, are as follows.[1] Ebenezer was a nursing home located in York County. In February 2003, Albert L. Clinton was placed at Ebenezer by his family. When he was admitted, Clinton had been diagnosed with short- and long-term memory deficits and impaired decision-making ability. Ebenezer was on notice that Clinton was at risk for the development of decubitus ulcers[2] and that he had to be given proper nutrition and be repositioned every two hours to avoid this condition.

Within three weeks of his admission to Ebenezer, Clinton developed severe decubitus ulcers. In April 2003, Clinton was admitted to Piedmont Medical Center in Rock Hill, South Carolina, where he was diagnosed with dehydration, hypernatremia[3], and severe decubitus ulcers. As a result of the allegedly negligent treatment at Ebenezer, Clinton was transferred to another long-term care facility in May 2003. Clinton died on May 15, 2003.

On February 6, 2006, Hooper filed with the York County Court of Common Pleas a summons and complaint in which she alleged substandard care and treatment rendered by Ebenezer contributed to Clinton's death. She asserted claims for wrongful death and survival. It is undisputed by the parties that the statute of limitations on these claims began to run upon Clinton's death on May 15, 2003 and expired three years later on May 15, 2006. See, e.g., S.C. Code Ann. § 15-3-530 (2005) (providing a three-year statute of limitations period for the claims enumerated therein).

According to an affidavit prepared by Hooper's attorney and supporting documents, in order to effectuate service Hooper's attorney called the number for Ebenezer and was told that the business had been sold and it was now "Agape Rehabilitation." Hooper's attorney drove by the building where Ebenezer had been located and saw a sign identifying the premises as "Agape Rehabilitation of Rock Hill."

The attorney searched the website for the South Carolina Secretary of State and found Ebenezer was listed as a business in good standing with a registered agent (Jack G. Hendrix, Jr.) located at 1415 Richland Street, Columbia, South Carolina. On February 8, 2006, the attorney forwarded the pleadings to the Richland County Sheriff's Office for service upon the agent at the designated Columbia address. At the end of February or the beginning of March, the attorney received an Affidavit of Non-Service from the Richland County Sheriff's Office stating service was not successful because the agent had moved to an unknown address.

The attorney then hired a private investigator, who found a personal address for the agent. On March 21, 2006, the attorney mailed the pleadings to the Richland County Sheriff's Office for a second attempt at service upon the agent. On April 10, 2006, the Richland County Sheriff's Office returned the pleadings and advised the attorney that the address was in Lexington County and therefore was not within its jurisdiction.

Immediately thereafter on April 13, 2006, approximately one month before the three-year statute of limitations was due to expire, the attorney forwarded the pleadings to the Lexington County Sheriff's Office for service upon the registered agent. The attorney made numerous follow-up calls to the Lexington County Sheriff's Office to determine the status of service and each time was told that the agent was being served and that he would be notified when service was complete. On June 12, 2006, after the statute of limitations had run, the attorney received an Affidavit of Non-Service from the Lexington County Sheriff's Office informing him that they had, in fact, been unable to effect service on the agent because "per [a] neighbor [the] agt [agent] left his wife a year ago [and it is] unknown where he lives now."

According to the attorney, he then hired a private investigator to try to serve Agape Rehabilitation. An Affidavit of Service and supporting documents indicate service was accomplished on June 15, 2006 by a process server upon Janet Inkelaar, who indicated that she was the Administrator of Agape Rehabilitation and that she was authorized to accept service on behalf of Ebenezer. Inkelaar stated Ebenezer had been taken over by Agape Rehabilitation of Rock Hill in December 2004, but the two businesses were "affiliated."

Ebenezer moved to dismiss Hooper's action on the basis service was not completed before the running of the three-year statute of limitations of section 15-3-530, nor within the time limits of Rule 3(a)(2) of the South Carolina Rules of Civil Procedure (SCRCP), which requires that service be made within the

statute of limitations or, if made thereafter, that it be made within 120 days of filing the summons and complaint. Ebenezer alleged Hooper's decedent died on May 15, 2003; therefore, the three-year statute of limitations expired on May 15, 2006. In this case, the summons and complaint were filed on February 6, 2006[4] and service was not effected until June 15, 2006, which was after the running of the statute of limitations and more than 120 days after filing of the summons and complaint.

The parties submitted affidavits and other materials, so the trial court converted the motion into one for summary judgment.[5] The trial court granted summary judgment to Ebenezer, finding Hooper's action was not timely commenced because service did not occur within the statute of limitations or within 120 days of filing the summons and complaint as required by Rule 3(a)(2), SCRCP.

The trial court rejected Hooper's argument that the 120-day period should not begin running until the last day of the statute of limitations, finding this conflicts with the clear and unambiguous wording of Rule 3(a)(2). The trial court also rejected Hooper's arguments that the statute of limitations should be equitably tolled or that Ebenezer should be equitably estopped from asserting the statute of limitations based on its failure to accurately list its registered agent for service of process with the Secretary of State as required by state law.

The Court of Appeals affirmed. Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008). We granted Hooper's petition for a writ of certiorari to review the decision of the Court of Appeals.

## II. LAW/ANALYSIS

### A. Standard of Review

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Brockbank v.

Best Capital Corp., 341 S.C. 372, 378-79, 534 S.E.2d 688, 692 (2000). An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCP. Id. at 379, 534 S.E.2d at 692.

## **B. Equitable Tolling**

On appeal, we first consider Hooper's argument that the statute of limitations should be equitably tolled for the delay in service that occurred while Hooper was trying to serve Ebenezer's nonexistent agent. Hooper asserts she was entitled to rely upon the public records and Ebenezer's failure to name a viable registered agent with the South Carolina Secretary of State as required by state law thwarted her repeated attempts to effect service. Hooper asserts that, under all the circumstances, it would be inequitable for Ebenezer to be allowed to benefit from its conduct by obtaining a complete dismissal of her claims. We agree.

"'Tolling' refers to suspending or stopping the running of a statute of limitations; it is analogous to a clock stopping, then restarting." 51 Am. Jur. 2d Limitation of Actions § 169 (2000). "Tolling may either temporarily suspend the running of the limitations period or delay the start of the limitations period." Id.

South Carolina law provides for tolling of the applicable limitations period by statute in certain circumstances. See S.C. Code Ann. § 15-3-30 (2005) (stating exceptions to the running of the statute of limitations when the defendant is out of the state); id. § 15-3-40 (providing exceptions for persons under a disability, including being underage or insane).

In addition to these statutory tolling mechanisms, however, "[i]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." 54 C.J.S. Limitations of Actions § 115 (2005). "Equitable tolling is a nonstatutory tolling theory which suspends a limitations period." Ocana v. Am. Furniture Co., 91 P.3d 58, 66 (N.M. 2004).

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Rodriguez v. Superior Court, 98 Cal. Rptr. 3d 728 (Ct. App. 2009). "Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period 'to ensure fundamental practicality and fairness.'" Id. at 736 (citation omitted).

The party claiming the statute of limitations should be tolled bears the burden of establishing sufficient facts to justify its use. Ocana, 91 P.3d at 65; see also 54 C.J.S. Limitations of Actions § 115 ("The party who seeks to invoke equitable tolling bears the devoir of persuasion and must, therefore, establish a compelling basis for awarding such relief.").

It has been observed that "[e]quitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." Ocana, 91 P.3d at 66. However, jurisdictions have considered tolling in a variety of contexts and have developed differing parameters for its application.[6] See, e.g., Irby v. Fairbanks Gold Mining, Inc., 203 P.3d 1138, 1143 (Alaska 2009) ("Under the doctrine of equitable tolling, when a party has more than one legal remedy available, the statute of limitations is tolled while the party pursues one of the possible remedies."); Abbott v. State, 979 P.2d 994, 998 (Alaska 1999) ("Federal precedent equitably tolls the limitations period in three circumstances: (1) where the plaintiff has actively pursued his or her judicial remedies by filing a timely but defective pleading; (2) where extraordinary circumstances outside the plaintiff's control make it impossible for the plaintiff to timely assert his or her claim; or (3) where the plaintiff, by exercising reasonable diligence, could not have discovered essential information bearing on his or her claim." (footnotes omitted)); Kaplan v. Morgan Stanley & Co., \_\_\_ A.2d \_\_\_, \_\_\_ (Vt. 2009) (2009 WL 2401952) ("Equitable tolling applies either where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit, or where the plaintiff has timely raised the same claim in the wrong forum." (citing Beecher v. Stratton Corp., 743 A.2d 1093, 1098 (Vt. 1999)); cf. Machules v. Dep't of Admin., 523 So. 2d 1132, 1134 (Fla. 1988) (stating the doctrine of equitable tolling, unlike equitable estoppel, does not require deception or misrepresentation by the defendant; rather, it serves to ameliorate the harsh results that sometimes flow from a strict, literalistic application of administrative time limits).

In our view, the situations described above do not constitute an exclusive list of circumstances that justify the application of equitable tolling. "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." Hausman v. Hausman, 199 S.W.3d 38, 42 (Tex. App. 2006). Equitable tolling may be applied where it is justified under all the circumstances. We agree, however, that equitable

tolling is a doctrine that should be used sparingly and only when the interests of justice compel its use.

We have previously tolled a statute of limitations based on equitable considerations. In Hopkins v. Floyd's Wholesale, 299 S.C. 127, 382 S.E.2d 907 (1989), a workers' compensation case, we tolled the running of the statute of limitations for the time that the employee was induced by the employer to believe the claim would be taken care of without filing a claim (the "reliance period"). In reaching this result, we considered two methods of treating the claim: (1) requiring that the claim be filed a "reasonable time" after the reliance period, or (2) tolling the statute of limitations during the reliance period. Id. at 129, 382 S.E.2d at 908-09. We held the better rule was to toll the running of the statute of limitations during the reliance period, as this "rule estopping employers from asserting the statute of limitation[s]" provided greater certainty and gave the employee the greatest benefit of the equitable rule. Id. at 130, 382 S.E.2d at 909.

In Schriber v. Anonymous, 848 N.E.2d 1061 (Ind. 2006), a widow brought medical malpractice and wrongful death claims arising out of the death of her husband. The widow encountered difficulties in effecting timely service because the defendant, a healthcare facility, failed to file a certificate of assumed name for its business designation and to conspicuously post its facility license in public view as required by state law. Id. at 1063. The Indiana Supreme Court, while deciding the case on another basis, observed that the proper procedure should have been for the court to judicially toll the expiration of the applicable limitations period for the time that the defendant's actions hindered the plaintiff's discovery of the proper entity name and thus delayed her attempt to effect service. Id. at 1063-64.

In the current appeal, we find Ebenezer's failure to properly list its registered agent for service with the Secretary of State as required by state law hindered Hooper's pursuit of service.<sup>[7]</sup> Although Ebenezer argues it is entitled to the dismissal of Hooper's action because she should have pursued alternative means of service, such as publication or service upon the Secretary of State, nowhere in Ebenezer's arguments does it acknowledge the obvious fact that the need for alternative means of service was caused by Ebenezer's own failure to supply the correct information regarding its agent to the Secretary of State as required by law. In fact, as Hooper noted in her brief, though several years had passed, Ebenezer still had not supplied the name of an appropriate agent for service of process to the Secretary of State at the time this case was initially brought before our Court. Hooper was entitled to rely on the public records and she diligently pursued service on what turned out to be a

nonexistent agent. Thus, it is not equitable that Ebenezer be the beneficiary of the drastic consequence of a dismissal.

Moreover, it is important to note that a party utilizes these alternative methods of service only after first exercising reasonable or due diligence to effect service on an individual or agent. See e.g., S.C. Code Ann. §§ 15-9-710 & -730 (2005) (providing that when an individual or corporate agent, respectively, cannot be located in this State after the exercise of due diligence, service may be had by publication once this fact has been established by affidavit to the satisfaction of the court); id. § 33-44-111 (2006) (stating if an agent for a limited liability company cannot be found after the exercise of reasonable diligence, service may be had upon the Secretary of State).

In this case, Hooper first tried to effect service upon the agent named by Ebenezer at the address it supplied to the Secretary of State. When that was unsuccessful, Hooper hired a private investigator, who found a personal address for the agent. Hooper contacted the Lexington County Sheriff's Department on numerous occasions and was told that service was being made. She was not notified until one month after the running of the statute of the limitations that service had been unsuccessful because the whereabouts of the agent could not be determined.

Hooper finally was able to effect service after the statute of limitations had run, only after she exercised reasonable and due diligence to serve Ebenezer's agent. Under Rule 3(a)(2), SCRPC, even if the limitations period has run, service may still be effected if it is accomplished within 120 days of filing of the summons and complaint. Unfortunately, Hooper was approximately one week past the 120 days. Thus, under the unique circumstances of this case, we conclude it is appropriate to equitably toll the statute of limitations for the time Hooper spent in pursuit of Ebenezer's nonexistent agent.

Finally, we note that public policy and the interests of justice weigh heavily in favor of allowing Hooper's claim to proceed. The statute of limitations' purpose of protecting defendants from stale claims must give way to the public's interest in being able to rely on public records required by law.

## CONCLUSION

As a matter of law and public policy, we reverse the trial court's grant of summary judgment in favor of Ebenezer and remand for further proceedings consistent with this opinion.[8]

**REVERSED AND REMANDED.**

**TOAL, C.J., WALLER and PLEICONES, JJ., concur. KITTREDGE, J., concurring in result only.**

[1] On a motion for summary judgment, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Bovain v. Canal Ins., 383 S.C. 100, 678 S.E.2d 422 (2009).

[2] Commonly referred to as bed sores. Webster's Third New International Dictionary 588 (2002).

[3] An excessive amount of sodium in the blood. Dorland's Illustrated Medical Dictionary 741 (25th ed. 1974).

[4] Ebenezer states in its materials that filing of the summons and complaint occurred on February 8, 2006, but this appears to be a scrivener's error.

[5] See, e.g., Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999) (allowing a motion to dismiss to be treated as a motion for summary judgment where the trial court considers materials outside the pleadings and the parties have a reasonable opportunity to respond to the materials).

[6] We note that in the jurisdictions referenced above that discuss tolling a limitations period when a plaintiff is prevented from filing a complaint, filing generally marks the time for commencement of an action. See, e.g., Alaska R. Civ. P. 3(a) (Alaska); Rule 1-003 NMRA (New Mexico); V.R.C.P. 3 (Vermont); see also Fed. R. Civ. P. 3 (federal rules).

[7] Under South Carolina law, corporations and limited liability companies must designate and continuously maintain an agent for service of process. See S.C. Code Ann. § 33-5-101 (2006) (corporations); id. § 33-44-108 (limited liability companies).

[8] Based on our holding, we need not reach Hooper's remaining arguments regarding the 120-day provision of Rule 3(a)(2), SCRCP and equitable estoppel. However, we note that, at oral argument, Hooper's counsel conceded the appropriateness of the ruling of the Court of Appeals regarding the application of Rule 3(a)(2), SCRCP.

## STATEMENT OF ISSUE ON APPEAL

1. Did the circuit court Judge M. Dennis **err** with his assumptions and his “cast iron” tolling of the **Statue of Limitations SC Code 15-3-530** when the circuit court should have allowed the Appellants pro se litigants, at least the opportunity to speak and be heard in a hearing for reconsideration of February 11, 2013, and then and only then the circuit court might have more fairly applied an Equitable Tolling Theory?
2. Did the lower court **err** when it continuously allowed Cesar E. McKnight to be the attorney for his co-defendants and his clients about Probate during all times pertinent to the forged Power of Attorney fraud act; with estranged wife Willie O.W. McFadden-Myers and Mrs. Myers granddaughter Latonya Hobson?
3. Appellants assert that the **Law of the Case** is that twice the case was adjudicated as being timely filed by both the Honorable Stephanie P. McDonald and the Honorable W. Jeffery Young; as both on the record declared this civil actions by a Scheduling Discovery ORDER and then ready for a Jury Trial; while the issue of three years was not a matter until Defendant-Respondent McKnight continued a repetitive “forum shopping” or the Circuit Judges that unfairly tolled the statue of limitations of a series of frauds alleged by the forgery and conversion and misrepresentation sections of the Complaint?
4. The last two transcripts before Honorable Judge Markey Dennis are provided in and of itself as substitution of and proof that these Appellant’s issues were “systemically prevented” from being raised at the lower court- -
  - a. Two each: Real Estate notarized-sales-contract has the same effect upon the **20 years Statue of Limitations for real estate instruments in South Carolina?** It is clear the motive was to prevent Henry Myers from completing his task to deed his life-long property to his own children that he wanted for his six children and two transfers were completed before the forgery scheme began.
  - b. Did Judge Dennis signing the **OEDER/JUDGEMENT** on January 25, 2013 while a hearing was scheduled and reluctantly help for the **Appellant’s Second Motion to Reconsider** on February 11, 2013 unfairly denying the Plaintiffs the opportunity to speak to the court below and cause for the expense of this very Appeal?
5. Did the two **Contract(s) for Sale of the Henry Myers family real property on Shrimp Road** that were created as a result of the forged Power of Attorney and notarized by Attorney McKnight fall into the 20 years Statue of Limitations for the real estate instruments South Carolina Code (b) within twenty years.
6. Can the Appeal Court reach to apply the ‘Clean Hands Doctrine’ in that the Respondent’s have committed the wrongful, intentional and malicious acts alleged by these Appellants and bar them from appearances in the South Carolina Courts in the future? *[This would be in the best interest of justice for all]*

### STATEMENT OF THE CASE

The Appellants, Jerome Myers and Gloria Myers are now seeking on appeal requesting a REMAND with an Equitable Tolling vice the 'cast iron' use of the Statue of Limitations in SC

The Appellants are the sibling and now heirs to their father, Henry Myers' matters.

The Respondents; Cesar McKnight {also the attorney for Ms. Willie O.W. McFadden-Myers (wife) and Latonya Hobson (her granddaughter)}, Ms. Willie O.W. McFadden-Myers became the estranged wife when she returned to live in Kingstree, SC March 2007.

The above captioned civil action was brought to expose this Respondent's Collusion for Forgery [on Henry Myers' General and Durable Power of Attorney Criminal Conversion; and Fraud, and Misrepresentation by Shelly All and her law firm. *[There was no medical power of attorney by the estranged wife to be found with the RMC OFFICES in Charleston, SC to the date yet it could exist under proper discovery].*

STATE OF SOUTH CAROLINA

COUNTY OF

Jerome Myers  
Gloria Myers

Plaintiff(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011 -CP- 10-2026

vs.

Attorney Cezair E. McKnight  
Ms. Willie O. W. McFadden  
Ms. Latoya Hubson  
(Please Print) Jerome Myers + Gloria Myers  
Submitted By: Jerome Myers + Gloria Myers

Address:

2321 Taylor St.  
Chas. S.C. 29406

SC Bar #:

Telephone #: 614-2766 + 747-6741

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
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| <input type="checkbox"/> Contracts<br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <input type="checkbox"/> Torts - Professional Malpractice<br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br><input type="checkbox"/> Previous Notice of Intent Case #<br>20 -CP-<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                                                                                  | <input type="checkbox"/> Torts - Personal Injury<br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input checked="" type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399) | <input type="checkbox"/> Real Property<br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                                                                              |
| <input type="checkbox"/> Inmate Petitions<br><input type="checkbox"/> PCR (300)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                       | <input type="checkbox"/> Judgments/Settlements<br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured<br>Settlement Payment Rights<br>Application (760)<br><input type="checkbox"/> Other (799) | <input type="checkbox"/> Administrative Law/Relief<br><input type="checkbox"/> Reinstatement Driver's License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899)                                                 | <input type="checkbox"/> Appeals<br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Commission<br>(990)<br><input type="checkbox"/> Employment Security Comm (991)<br><br><input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Special/Complex /Other<br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)                                                                                      | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of-State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in<br>an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

Submitting Party Signature:

Jerome Myers  
Gloria Myers

Date: March 17, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

2011-CP-10-2026

STATE OF SOUTH  
COUNTY OF  
CHARLESTON

IN THE COURT OF  
COMMON PLEAS FOR  
THE NINTH JUDICIAL  
CIRCUIT

Jerome Myers And  
Gloria Myers

CASE NO

FILED  
2011 MAR 17 PM 11:16  
JULIE J. ARMSTRONG  
CLERK OF COURT

Plaintiff,

SUMMONS

V.S.

Jury Trial

Defendants,

Attorney Dennis J. Christensen,  
Attorney Shelly K. Alb, Attorney  
Cezar E. McKnight, Sgt.  
Donald Daquigan, Ms. Elizabeth  
Spencer - Elderly Support Unit,  
Ms. Willie O. W. McFadden Myers, Ms.  
Latanya Hobson

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and  
required to answer the Complaint in this action,  
a copy of which is herewith served upon you,  
and to serve a copy of your Answer to said Com-  
plaint on the Plaintiff's Jerome Myers and Gloria  
Myers 2321 Taylor Street, Charleston, South Carolina  
29406 Within (30) days after service here of, exclusive

Of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and Judgment by default may be rendered against you for the relief demanded in the Complaint.

Jerome Myers

Jerome Myers

Gloria Myers

Gloria Myers

2321 Taylor St.

Charleston, SC 29406

747-6741 or 614-2766

Charleston, South Carolina  
March 17, 2011

2011-CP-10-2026

Defendants Are:

① Attorney Dennis J. Christensen  
260 West Coleman Boulevard Suite D  
Mt. Pleasant, Charleston, S.C. 29467

② Attorney Shelly K. All  
260 West Coleman Boulevard Suite D  
Mt. Pleasant, Charleston, S.C. 29467

③ Attorney Cezar E. McKnight  
108 W. Main Street Kingstree  
South Carolina 29556

④ Ms. Willie O. W. McFadden Myers  
301 Lexington Ave.  
Kingstree, South Carolina 29556

⑤ Ms. Latonya Hobson  
3212 Oak Spring Street  
Columbia, Ohio 43219

⑥ Sgt. Donald Daquigan  
West Ashley Police Dept.  
180 Lockwood Boulevard  
Charleston, South Carolina 29403

(1).

Complained

Defendants Continued:

⑦ Ms. Elizabeth Spencer - Dept Elderly Support  
Unit of The Downtown Police Dept.  
180 Lockwood Boulevard  
Charleston, South Carolina 29403

FILED  
JULIE J. ANASTROPE  
CLERK OF COURT  
MAY 17 PM 1:18

Statement OF Claim Of Complaint

The Plaintiffs, The Myers Brother and Sister,  
Jerome Myers and Gloria Myers, File Pro Se, This  
is a Civil Action under Local Civil Rule 73.02 D.S.C.,  
Complaint against these names of Defendants as  
individuals and designated Other wise as officers  
of South Carolina Courts or employees of local  
Government entities; and where at all times  
pertinent to this matter residents of the State of  
South Carolina and in Cities located outside of  
Charleston County.

At ALL times, these Officers and Governmental  
employees are subject to Official Duties and  
Obligations of their offices and their employment  
being subject to an (1) Official Duty to Perform  
(2) A Time Limit to those Official Acts of Law,  
we, The Myers; Children Jerome Myers and  
Gloria Myers, Hired Attorney Dennis J. Christens-  
en to take care of Our Case of Forgery of the  
Durable Power, that was committed on April 12, 2007.

(2.)

This Document was sign illegal and the Signatures, was not Our Father's Mr. Henry Myers.

Our Father, was in Trinity Mission of Charleston, South Carolina 29414 at 2230 Ashley Crossing Drive, After his Leg Surgery at The V.A. Hospital in February 2007.

We, Met with Attorney Dennis J. Christensen to Discuss, the illegal Signatures of the Durable Power Of Attorney case which was Fraud.

We, bought in legal Documents showing Our Father's legal Signatures, which he had sign these Documents legally and The illegal Document of Durable Power of Attorney on April 12, 2007 were different and not his signatures and he did not give permission for anyone to sign any Documents for Henry Myers at anytime.

Attorney Dennis J. Christensen examine these Documents which had Signatures of Our father that was legally sign, Compare to the illegal Sign, Signatures, Notary and Wittness on April 12, 2007. Attorney Dennis J. Christensen agree to take the Fraud case, assuring us that he could get Justice, for us and Our Father. After, Meeting with Attorney Dennis J. Christensen, he give us an appointment with him to meet, the first of June 2007.

Continued Next  
(3),

Upon Arriving for Our Appointment at the Office of Attorney Dennis J. Christensen, by Our Surprise Attorney Dennis J. Christensen introduce us to his partner Shelly K. All and was turning our case about the Forgey of the Durable Power of Attorney over to Attorney Shelly K. All.

We, went into her Office to discuss this matter of the Fraud Document which was Sign illegal, Witness and Notary on April 12, 2007, even though we were expecting to continued this case with Attorney Dennis J. Christensen.

We, left the Meeting with another appt. for the end of the month of June 2007.

We met with, Attorney Shelly K. All at the Office, Discussing a phone call about the Sign ature of the illegal, Sign of the power of the Attorney that was Notary, witness and Sign by those whom insisted that, the illegal Documents of the Durable Power of Attorney was sign in their Presence on April 12, 2007.

Which Our Father Didn't sign any Documents of the Durable Power of Attorney nor gave permission for the illegal Signatures, of the Durable of Power of Attorney, which was Sign, Witness and Notary by others.

Ms. Willie A. W. McFadden-Myers Sign the Durable of The Power Attorney illegal and Grand-Daughter Ms. Latonya Hobson Witness and Sign the illegal Documents.

(4)

Attorney Cezar McKnight, Noturize and  
Witness this Documents of Durable Power of  
Attorney, that was illegal sign on April 12, 2007.

This, illegal Document was Surpose to be  
Sign in these Wittness's Presence, which this  
didn't take place on April 12, 2007 by Mr. Henry  
Myers, with his signatures.

We became very, discourage, after find-  
ing out this information and the Durable Of Power  
Of Attorney was not sign with, our father's signatures  
Nor his permission, for this Documents to be sign  
by other's for him.

We Felt, that there were no-one listening  
and Fighting for the Rights of our father.

Our, Dad is a World War II Veteran and worked  
all his life, to accomplished what he has been Bless  
with.

So, we went to the City Police Dept. Downtown  
And Explain to them what have happen with the  
Documents that was Fraud.

The Desk Police recommened, that we go  
back to the area where the Fraud was committ-  
ed on April 12, 2007 West Ashley Police Dept.

We Met with Police Sgt. Donald Daquigan  
We explain to him that the Document of the  
Durable Of Power Attorney that was not sign  
by our father, nor consented to have any one  
Sign any Documents for him.

(5).

Sgt. Donald Daquigan, agree to investigate this matter concerning Fraud of The Durable Power of Attorney that took place on April 12, 2007 of illegal Signature and Witnesses and Notary.

Sgt. Donald Daquigan, assure us he would keep in touch, there where a few weeks before we heard anything, from him.

We, decided to call, Sgt. Donald Daquigan after not hearing from him.

Sgt. Donald Daquigan through a phone conversation, that he turn our case over to Ms. Elizabeth Spencer Dept. of Elderly Support Unit.

He, told us that she would be able to help us in this matter of Fraud Document of the Durable Power of Attorney that committed against my Father's right.

Ms. Elizabeth Spencer - Dept. Elderly Support Unit at the City Police Dept. called us to meet with her at the City Police Dept. Downtown. We met with Ms. Elizabeth Spencer at the City Police Dept. in the middle of the floor, at a table.

We, Discuss The Documents with Ms. Elizabeth Spencer about Fraud that was committed against our Father on April 12, 2007.

Ms. Elizabeth Spencer, assure us that Sgt. Donald Daquigan have fax over to her documents that concern the illegal Documents.

(6)

We left, the Meeting with Ms. Elizabeth Spencer assuring us that, this was white Collar Crime and this illegal will be taken care of by her and She would, keep in touch by phone calls, because, She said that, She didn't have an Office for us to meet with her in.

Before, we left, our Meeting with Ms. Elizabeth Spencer, agree that the signature on the Durable Power of Attorney was illegal compare to the Legal Documents that we have given to Sgt. Donald Daquigan, that was fax over to her from his Office.

We didn't, hear from Ms. Elizabeth Spencer for over a few weeks, We try to call, her at Office, left message's, this continues on for a few more weeks.

We decided to call Sgt. Donald Daquigan to find out if he, knew any information from Ms. Elizabeth Spencer, since he turn this case over to her, Sgt. Donald Daquigan, wanted us to meet him at the City Police Dept. Downtown to recieved our Documents, that we have given to Elizabeth Spencer through him.

Sgt. Donald Daquigan, gave us a Folder without a case number. We ask where was the Case number, since they were investigating on our behalf, But, Sgt. Donald Daquigan let us know, there wasn't a case number, because this wasn't a case, We recieved, a letter with the Folder, from Sgt. Donald Daquigan, on November 7, 2008.

(7)

We, tried to present some more evidence to  
Sgt. Donald Daquican, and Ms. Elizabeth  
Spencer but they didn't wanted see or know  
about it.

It seem, that we tried to, recieved Help in  
this, matter of Fraud of illegal Documents and  
evidence and every where we turn on getting  
Justice in this matter.

~~Jerome Myers~~

~~Alvin Myers~~

2321 Taylor Street  
Charleston, S.C. 29406  
747-6741 or 614-2766

## STATEMENT OF FACTS

This civil action was brought against the Defendants, hereafter the Respondents; Shelly K. All Esq. Cezar E. McKnight Esq. Willie O.W. McFadden-Myers and Latonya Hobson by the plaintiffs Jerome Myers and Gloria Myers. The Plaintiffs are the children of Henry Myers.

Our Father, Henry Myers was first married to our mother, and together they had six children together and lived on Shrimp road, Charleston, SC. After our mother passed our father married a second time to Willie O.W. McFadden-Myers and this marriage there were no children together.

Ms. Willie O.W. McFadden-Myers has two grown daughters herself from a former marriage. Ms. Willie O.W. McFadden-Myers moved into the homestead on Shrimp Road in Charleston, SC after the marriage to Henry Myers. Ms Willie O.W. McFadden-Myers moved to Charleston from Kingstree, SC where she was living with her two daughters there.

Our father Henry Myers was up and doing for himself and his wife, Ms. Willie. O.W. McFadden-Myers. My father kept up with his doctors visits at the Veterans Hospital in Charleston, SC. Our father was very active with his church, his community and his grandchildren and great-grandchildren; all about his homestead. He cut his own grass with his own lawnmower. He drove his own truck up to the time of his leg surgery.

In February of 2007, our father Henry Myers had vascular surgery done on one of his legs at the Charleston Veterans Hospital in Charleston, SC. After being there for a few days, the doctor for the vascular surgery sent him to Ashley Crossing Drive, the Trinity Health Mission Health and Rehab in Charleston, SC. He was staying there anywhere from fifteen days to thirty days of the approval of the V.A. Hospital. At the Trinity Mission Rehab, Ms. Willie O.W. McFadden-Myers decided that our father was not allowed to return to his homestead on Shrimp Road.

After our father realized that he wasn't going home, because his wife decided that she was returning back to Kingstree, SC with her children, and that she had decided to refuse to allow is to care for our father at his home. Our father became depressed after he realized that his wife had moved back to her hometown and didn't want him in his homestead on Shrimp Road. Our father got depressed and stopped eating well and got some dehydration and was sent out to the emergency room twice from Trinity Mission Rehab. On the second time to the emergency room the doctor decided that he needed to come to the V.A. Hospital in Charleston, SC.

When our father was placed at the Charleston V.A. Hospital, he was moved upstairs to the V.A. Hospital nursing home in the same building. Willie O.W. McFadden-Myers decided that he needed to be placed under hospice at the V.A. Hospital nursing home care right here in Charleston. During this time, Willie O.W. McFadden-Myers used a forged (fraud) document that was signed illegally.

We the Myers children and our father found out through the V.A. that she was using the Power of Attorney which the V.A. social worker told us about and they did not know it was a fraud and forgery and that is how Willie O.W. McFadden-Myers was able to use the Power of Attorney . We suspected that the Power of Attorney had to be a fraud and decided to go to Attorney Dennis J. Christensen , which we hired him as our attorney as of (June 6, 2007) to take care of this matter of forgery of a Durable Power of Attorney that was filed on April 12, 2007.

Jerome Myers and Gloria Myers went to the Charleston County Registrar and Means and Conveyance Office to get the Power of Attorney, Willie O.W. McFadden-Myers was using before we went to the (RMC) office. We had an appointment with Attorney Dennis J. Christensen to discuss the suspected fraud of the Power of Attorney.

We met with Attorney Christensen discuss in his office taking the case of suspected fraud. We brought in the documents believed to be illegal about the Power of Attorney and legal documents showing our fathers signatures which we had signed in the past and present as samples of our father's handwriting. The suspected illegal document of the Durable Power of Attorney was signed or filed on April 12, 2007. The signatures were not like our father Henry Myers. Our father did not give anyone permission to sign any documents for him at all.

Attorney Christensen examined all of the documents which had signatures of our father's handwriting that was legally signed and he compared them to the illegal signatures; Notary and Witness of April 12, 2007 (RMC) date. Attorney Christensen agreed to take the case on because he believed it to be fraud case, assuring us that he could get justice through the court for our father Henry Myers and his children. So he made another appointment for us to meet with him on this suspected fraud case that was committed on April 12, 2007.

We, the Myers children met Attorney Dennis J. Christensen and he introduced us to his partner Shelly K. All on this second appointment. We were expecting that what Attorney Christensen had assured to us that Shelly K. All will work with us on this fraud case. Jerome Myers, Gloria Myers and Melba Myers-Taylor went into Attorney Shelly K. All, office to discuss this case with her even though, we were expecting to continue this case with Attorney Dennis Christensen.

We sat down and explained what we wanted to happen in this fraud case. This meeting was at the end of June 2007. The documents were again reviewed with Ms. All just like with Mr. Christensen before. We pointed out that this Power of Attorney was signed filed April 12, 2007 (RMC) date by Mrs. Willie O.W. McFadden-Myers and her granddaughter, Ms Latonya Hobson as witness. Attorney Cesar McKnight was their attorney and notarized and witness this suspected forged Power of Attorney signed filed April 12, 2007(RMC) date.

These illegal documents was supposed to be signed by our father Henry Myers in the presence of their (Respondents) Attorney Cesar E. McKnight who signed this document himself and notarized it with Mrs. Willie O.W. McFadden-Myers who signed and witnessed along with

her granddaughter, Latonya Hobson that came to Charleston, SC from Ohio to be a witness signing the forged Durable Power of Attorney. The fact that Mrs. Willie O.W. McFadden-Myers used this document (Power of Attorney) against our father and his children to get way about the matters above and the property on Shrimp Road.

In the meeting with Shelly K. All we were prepared to go on the witness stand for the fraud that was committed and filed on April 12, 2007 (RMC) date against our father and his six children. Shelly All told the Myers children that we had to wait on the right Judge to be heard in front of about the forgery. When our hearing came up in front of the Judge in court we the Myers children were not allowed to speak before the court because there was a closed meeting in the Judge's chambers. *(There was no hearing and no transcript exists for attaching to the Appellant's Record on Appeal)*. After our Attorney Shelly K. All came out of the meeting in the back of the Chambers we asked her when the court was going to start so we can go on the witness stand.

Our Attorney Shelly K. All advised us that she would go back into the Judge Chambers to speak with McKnight. After coming back and out a third time she met with the Myers children in a room of the court room. We the Myers children and Attorney Shelly K. All sat down and she advised us that they came to an agreement in the Chambers that they dropped the illegally signed Durable Power of Attorney and had made Mrs. Willie O.W. McFadden- Myers our father's Conservator along with her Attorney Cezar E. McKnight behind closed doors.

We told Attorney Shelly K. All we were not satisfied of what had taken place in the Chambers without us even agreeing on this matter and we were looking to be heard in court on the record. We felt it wasn't right after we hired their law firm to deal with the forgery case that had been committed and filed on April 12, 2007 (RMC) date by the same Respondents (Defendants) while they were being heard in the Judge's Chambers, but not the Myers's children being on record. Attorney Shelly K. All informed us the Myers children, that the decision has been made and nothing we could do after all that was his wife and that their ruling stands.

Attorney Shelly K. All informed us that we could file a petition to become Guardian and Conservator over our father, so we agreed since we didn't know what else to do. We felt very encourage after finding out we could be a Guardian and Conservator for our father as his own children and the court and our attorney made his wife the Conservator and appointed a Guardian and Guardian Ad Litem for our father Henry Myers, at this typically "back door meeting" (without a hearing nor one held on the record).

We the Myers children became very discouraged because we did not hire the attorney All and her law firm to start out in a Probate Guardian and Conservator for us and our father. We wanted them to deal with the matter of the suspected fraud and forgery documents against those that committed the alleged crime on April 12, 2007 (RMC) date. Resultantly and instead we had to visit our father in five different nursing homes from Charleston to Florence SC. We felt that

no one was listening and fighting for our justice or right of our father and his children. Our father Henry Myers is a WWII veteran and worked all of his life to accomplish what he had been blessed with in his lifetime.

So we decided to go the Charleston City police Department and explain what has happened with the suspected fraud and forgery documents. The city police department sent us to the West Ashley Police Department. So we went to West Ashley and there we met with Sgt. Donald Daquigan. We explain to him that the documents of the Durable Power of Attorney that we suspected were not signed by our father, nor had he consented to have anyone sign any such documents for him. Sgt. Donald Daquigan assures us that he would keep in touch and agree to investigate the matter concerning the alleged fraud and forgery of the Durable Power of Attorney that took place on April 12, 2007 (RMC) date our father was at the Trinity Mission and Rehab in West Ashley at the time.

Sgt. Donald Daquigan assured is that he would keep in touch with us, and then there were a few weeks before we heard anything from him. Through a phone conversation, when we called and Sgt. Daquigan informed us that he turned our case over to Ms. Elizabeth Spencer, department of Elderly Support Unit and Charleston City Police Department. He told us that Ms. Spencer would be able to help us in the matter committed against out father's right.

Ms. Spencer called us to meet with her at the Charleston City Police Dept on Lockwood Blvd. Ms Spencer had set up a small table and chairs in the middle of the public lobby for our privacy-sensitive meeting about our criminal complaint. We started with the documents of alleged fraud and forgery of the Durable Power of Attorney filed April 12, 2007 (RMC) date. Before we left the meeting with Ms. Spencer we agreed that the documents given to Sgt. Daquigan that he faxed over to Ms. Spencer were suspect of fraud and forgery.

We did not hear from Ms Spencer for a few weeks. We tried to call her office number we left her messages and there non-responsive attempts to follow-up went on for a few more weeks to no avail. We then called Sgt. Daguigan to find out any progress and any new information from Ms Spencer since Sgt. Daquigan had turned the case over to Ms. Spencer and he wanted us to meet him at the main police Station on Lockwood Blvd so he could return all that we had given to him and Mrs. Spencer through him. Sgt. Daquigan gave us a folder without any case number. We asked where the case number was the Sgt. said 'there was no number because there was not a case'. We asked for a letter with the folder from Sgt. Daquigan. His letter is dated November 7, 2008. We tried to present some more recent evidence from our handwriting expert receive October 18, 2008. Neither Sgt. Daquigan nor Ms. Spencer wanted to see it or wanted to know about it. The Police Dept. would not take the affidavit of the Handwriting Expert.

Our father Henry Myers was diagnosed by the Veteran Administration with rating decision computer December 15, 2008 as him being competent and that caused his retirement payments to be returned directly to his control by the Federal Government. Our Father returned

payments to be returned directly to his control by the Federal Government. Our Father returned to his homestead with his children March of 2009. We the Myers children have tried diligently to receive help with this matter of fraud and forgery of the illegally used document and new evidence of same. Everywhere we turned we were turn away and there was no justice in this matter. Our father Henry Myers was diagnosed by the Veterans Administration with rating decision completed December 15, 2008 as him being competent and that caused his retirement payments to be returned directly to his control by the Federal Government. Our father returned to his homestead with his children of March 2009.

We the Myers children have "tried diligently" to receive help with this matter of fraud and forgery of the illegally used documents and new evidence of same. Everywhere we turned—we turned away and there was not any justice in this matter.



**DEPARTMENT OF VETERANS AFFAIRS**  
Columbia SC  
1801 Assembly St.  
Columbia SC 29201

**Henry Myers**

**VA File Number**  
**07 838 531**

**Represented by:**  
**AMERICAN LEGION**

**Rating Decision**  
**December 15, 2008**

### **INTRODUCTION**

The records reflect that you are a veteran of the World War II Era. You served in the Army from March 12, 1943 to December 29, 1945. Since our last review of your claim, we received additional evidence on October 10, 2008. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

### **DECISION**

You are considered competent.

### **EVIDENCE**

- Medical evidence submitted by the veteran showing treatment by Dr. Jessica Broadway, Assistant Professor of Psychiatry, dated October 2, 2008
- Rating Decision dated December 1, 2008
- Notification Letter dated December 2, 2008
- Medical statement provided by Dr. Robert T. McDonald of Charleston VA Medical Center dated May 5, 2008



**DEPARTMENT OF VETERANS AFFAIRS**

**Regional Office  
1801 Assembly Street  
Columbia SC 29201**

**SEP 11 2008**

**HENRY MYERS  
5320 JURY LN  
NORTH CHARLESTON SC 29406**

**In Reply Refer To: 319/213  
C 07 838 531  
MYERS, Henry**

Dear Mr. Myers:

We received your request for an extension of time to provide evidence regarding your ability to manage your funds on August 5, 2008.

Based upon your request, we have extended the due process period for sixty days from the date of this letter, to allow you to submit the additional evidence. However, if the evidence is not received at the end of the sixty day period, we will take our proposed action.

**Do You Have Questions Or Need Assistance?**

If you have any questions, you may contact us by telephone, e-mail, or letter.

| <b>If you</b>    | <b>Here is what to do.</b>                                                                                                    |
|------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Telephone        | Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.           |
| Use the Internet | Send electronic inquiries through the Internet at <a href="https://iris.va.gov">https://iris.va.gov</a> .                     |
| Write            | Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter. |

In all cases, be sure to refer to your VA file number 07 838 531.

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.



Exhibit (A) (B)

### REASONS FOR DECISION

#### Competency to handle disbursement of funds.

You are considered competent.

A mentally incompetent person is defined as one who, because of injury or disease, lacks the mental capacity to control or manage his or her own affairs, including disbursements of funds without limitation. Where there is a doubt as to whether the beneficiary is capable of administering his or her funds, such doubt will be resolved in favor of competency.

In the rating decision, dated December 1, 2008, we rated you incompetent based on information submitted by Dr. Robert T. McDonald of Charleston VA Medical Center. The physician reported you suffer from advanced dementia and that you are not capable of handling your affairs, including financial issues. In addition to, a letter provided by Walter R. Kaufmann dated April 8, 2008, shows appointment as your fiduciary. Since there was a definite finding of incompetency by a physician in this case and you were not shown to be able to manage personal affairs to include disbursement of funds, we rated you incompetent for purposes of managing VA payments.

In our letter dated December 2, 2008, we informed you of our final decision rating you incompetent for purposes of managing VA payments. Since our last review of your claim, we received medical evidence provided by you showing treatment by Dr. Jessica Broadway, Assistance Professor of Psychiatry, dated October 2, 2008, showing improvement in your overall condition with prescribed Celexa. The physician also noted that you are likely capable of managing your own funds as of this date. You expressed concern of the possibility of your estranged wife spending your money on herself and not ensuring your well-being is cared for after the bills have been paid.

Based on the above information, you are shown to be able to manage personal affairs to include disbursement of funds. Therefore, we have determined that you are now competent for VA purposes.

The effective date, December 15, 2008, is the date of the rating decision.

#### REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, [www.va.gov](http://www.va.gov).

Exhibit (A)(B)

MYERS, HENRY  
001118763 11/05/24 M B  
10/02/08 03:00PM NEW  
BROADWAY MD, JESSICA L  
V# 243119625 A# 5411037 M100  
PSYCH GERIATRICS PGO

Assessment: Regarding his diagnoses, I believe that his co-morbid medical problems and testing on MMSE is reflective of mild vascular dementia (which may also have an Alzheimer's component. As most vascular pathology accompanies plaques and tangles on autopsy), low education, and depression. As far as his capacity to manage his own funds, he seems to have a fair grip on current events (including with the economy) and is able to logically state how he would go about paying his bills. I do not believe that his dementia is so advanced at this time that he is unable to handle his own check. Of course, he does have a progressive condition and may not be able to manage his own affairs in the future. I cannot predict when this time may come.

Axis I: Vascular dementia, mild (290.40); R/O Alzheimer's dementia, mild (290.00); Depression NOS (311); Anxiety NOS (300.00)

Axis II: Deferred

Axis III: Arthritis, Prostate cancer, peripheral vascular disease, glaucoma, hypertension

Axis IV: moderate (financial, separation from estranged wife who still has his check)

Axis V: 60-65

Plan:

1. Regarding his treatment of depression, anxiety, and mild dementia - I believe that he is on appropriate medications at this time. I would suggest that his Celexa be increased. However, he doesn't know the dose right now and his daughter plans to get back with me. This is currently being rx'd by his PCP at the VAMC, so his PCP may want to increase this at his next visit (which is going to be soon from what I understand). He is not yet appropriate for Namenda.
2. Regarding his ability to manage his funds, I believe that he is likely capable of doing this right now. Of course, his condition will progress in the future. I would recommend to the VA and the patient one of three courses of action: a) that he is allowed to manage his own funds for now and monitored for progression, b) that he assign another family member to be his payee, or c) that he designate Family Services to be his payee. It seems, per his report, that the main problem is his estranged wife spending his money for herself and not passing along any extra after the bills are paid.
3. Finally, I have suggested that if he doesn't want her to be his designated NOK or have authority when he becomes more ill, he needs to begin getting a POA in place with a person of his choice (or get a divorce).
4. RTC 2-3 months for f/u.

Jessica Broadway MD 10/02/08 4:35pm  
Jessica Broadway, MD (pager 14582)  
Assistant Professor of Psychiatry

Note - pt given 2 copies of this evaluation, 1 for the VA and 1 for Dr. MacDonald.

Exhibit "A"

**OBERMAN & OBERMAN, LLC**  
ATTORNEYS AND COUNSELLORS AT LAW  
104 CHURCH STREET  
CHARLESTON, SOUTH CAROLINA 29401

MARVIN L. OBERMAN  
HAROLD A. OBERMAN

October 23, 2008

TELEPHONE (843) 577-7010  
FACSIMILE (843) 722-7359  
EMAIL: obermanlaw@bellsouth.net

Exit Realty Home Store  
10050 Dorchester Road  
Summerville, SC 29485

BY COURIER

RE: Henry Myers  
Shrimp Street - Sol Legare (TMS No. 330-10-00-003)

Dear Sir or Madam or To Whom It May Concern:

This is to inform you that the property you have listed on Shrimp Street (TMS No. 330-10-00-003) is under Court Order not to be sold. For this property to be sold, the Charleston County Probate Court must issue an Order. Any sale without this Order will not be valid. Please take this as appropriate notice.

Yours very truly,



Harold A. Oberman

HAO/shb

f:\ob\myers736\lrr\exit.j23

**Oberman & Oberman**

**From:** "Ken Quick" <Ken@ExitRealtyHS.com>  
**To:** <ObermanLaw@bellsouth.net>  
**Sent:** Thursday, October 23, 2008 3:23 PM  
**Subject:** re: exit.j23

Mr. Harold A. Oberman,

I am in receipt of your letter dated October 23, 2008 and would like to inform you that we do not have the property on Shrimp St., TMS# 330-10-00-003, listed on the multipal listing service. Attached please find a copy of the Withdrawn listing and a copy of the history of this past listing. Please note that once we were informed of the problem that exist on the above mentioned property, we withdrew it on March 18, 2008.

To be honest with you, I am confused, is there something that has not been brought to my attention by my sales associate? If so please let me know, and I will address it with her.

Thank you in advance for any information that you can share with me.

Sincerely,

Ken Quick

Ken Quick Broker/Owner  
 GRI, ABR, e-PRO, SRES

mailto: [Ken@ExitRealtyHS.com](mailto:Ken@ExitRealtyHS.com)  
[www.ExitRealtyHomeStore.com](http://www.ExitRealtyHomeStore.com)  
 Service Summerville, SC  
 and the Tri-Counties

*Exit Realty Home Store*  
*If Service is a Thing of the*  
*Past... Nobody Told Us!*

10050 Dorchester Rd. Ste. 110  
 Summerville, SC. 29485  
 Office: 843 873-0021  
 Fax: 843 873-0079  
 Cellular: 843 901-0058

Confidentiality Note: The information contained in this message, and any attachments, may contain confidential and/or privileged material. It is intended solely for the person or entity to which it is addressed. Any review, retransmission, dissemination, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

**0 SHRIMP ST****CHARLESTON, SC 29412****LP: \$375,000**

**MLS#:** 2805408m - VAC  
**Area:** (21) CHS-James Island  
**Municipality:** (24) JAMES ISLAND

**Status:** Withdrawn

Click photo for additional media and enlargement

**Low Price:****Zoning:** Residential**Tax Map#:** 330-10-00-003**Address:** 0 SHRIMP ST**City:** CHARLESTON**Zip:** 29412**Lot Size:** 0**Acres:** 4.10**Subdiv:** SOL LEGARE**Subsec:****Grade Sch:** JAMES ISLAND ELEMENTARY**Middle Sch:** JAMES ISLAND**High Sch:** JAMES ISLAND CHARTER**Legal Desc:** TMS #330-10-00-003**Dev Status:** Other**Docs Avail:** Aerial Photo**Existing Util:** Sewer @ Site, Water, Electricity**Road:** St/cnty Road**Income:****Front:****Structures:** Util/stg Bld**Misc:****Uses:** Residential**Lot Desc:** Tidal Creek, Marshfront, 2-5 Acres**Amenities:****Auction:** Auction Type:**Reserve Amt:****Directions:** Take Folly Road towards Folly Beach. Turn right onto Sol Legare Road by Piggly Wiggly. Turn right onto Shrimp Street. The lot is at the end of Shrimp Street.

**Remarks:** Quiet marshfront property. Holland Island Creek borders the back 2 sides of the property, which leads to the Stono River. Looking into the possibility of obtaining a dock permit. Peaceful, natural views of marshlands beckon you outdoors. Beautiful, mature trees and palms on the property. Approximately .9 acres are highland, approximately 3.2 acres are marsh. With the exception of 2 old storage buildings and some minor cleanup, property is cleared and ready to build on. Just minutes from Folly Beach, and about 10 minutes from the Connector, and downtown Charleston. A public boat landing is close - about one mile from the property. Peaceful, country setting, but close to all the amenities of a city. Call today for an appointment to view the property. Don't miss this great opportunity to build the home of your dreams on this spectacular parcel of land. Buyer to verify acreage, schools, and anything of importance.

**Agnt Notes:** HAS BEEN TEMPORARILY WITHDRAWN FROM MARKET PENDING RESOLVEMENT OF EASEMENT ISSUES. Contact Tammy Thompson, 412-1856 with any questions. There is an easement of necessity on neighboring property, until final easement issues are resolved. Please call listing agent for showing instructions. Please do not enter storage building(s) due to unknown condition & safety of building. Click here to report incomplete or inaccurate information

**Prospect Ex:****Financing:** Conventional, Cash**Assumable:** No**C/R:****Taxes:****HOA Fee:****Assmt Ratio:****SpAssmt:****Owner:**

OF RECORD

**List Date:** 2/13/2008**Exp Date:** 2/12/2009**CntngncyRsn:****List****Agent:** (17903) TAMMY L. THOMPSON**Type/Comp/SubAccept:** EXRTSEL/5 %/N**List Office:** (8193) EXIT REALTY HOME STORE**Variable:**

N

**Co-Off:** (8193) EXIT REALTY HOME STORE**Co-Agt:**

(10343) LAURENCE SMITH

**Contacts:** Agent Mobile Agent Office Direct  
 (843) 412-1856 (843) 873-0021

--Information deemed reliable but not guaranteed--Copyright: 2008 by the Charleston Trident MLS Association of REALTORS

Prepared by KEN QUICK of EXIT REALTY HOME STORE on 10/23/2008 3:10:42 PM

tp://www.ctarmls.com/ListitCharleston/ListitLib/report\_builder.aspx?report=members\_full\_prop1&ml... 10/23/2008

## LISTIT Search Results

Page 1 of 1

|   | MLS#     | Date     | Sys Date | Sta | Cal | Ar | Property Address | Price     | DOM | Agent | ChangeBy | Ofc ID |
|---|----------|----------|----------|-----|-----|----|------------------|-----------|-----|-------|----------|--------|
| 1 | 2805408m | 03/18/08 |          | WTH | VAC | 21 | 8 SHRIMP ST      | \$375,000 | 7   | 17903 |          | 8193   |
|   |          | 03/18/08 |          | BOM |     | 21 |                  | \$375,000 | 34  | 17903 |          | 8193   |
|   |          | 02/22/08 |          | WTH |     | 21 |                  | \$350,000 | 8   | 17903 |          | 8193   |
|   |          | 02/15/08 |          | BOM |     | 21 |                  | \$350,000 | 2   | 17903 |          | 8193   |
|   |          | 02/15/08 |          | WTH |     | 21 |                  | \$350,000 | 2   | 17903 |          | 8193   |
|   |          | 02/13/08 |          | ACT |     | 21 |                  | \$350,000 | 2   | 17903 |          | 8193   |

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHARLESTON

IN THE MATTER OF HENRY MYERS

CASE NUMBER 200710-0091

INVENTORY AND APPRAISEMENT

☒ ORIGINAL

☐ SUPPLEMENTAL # \_\_\_\_\_

Conservator: Willie W. M. Myers

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

Copies of this inventory have been sent to the following persons:\*

SWORN to before me this 20th day of  
November, 20 07

[Signature]  
Notary Public for South Carolina

My Commission Expires: September 24, 2011

Signature: Willie W. M. Myers

Name: Willie W. M. Myers

Address: 301 Lexington Avenue  
Kingsree, SC 29556

Telephone (O): 843 354-2260

(H): \_\_\_\_\_

The gross fair market valuation of all assets, regardless of situs, should be given as of the date of appointment. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting, or adding to an original inventory.

The type and amount of any encumbrances that may exist with reference to any item should be disclosed.

RECAPITULATION

|                                            |               |
|--------------------------------------------|---------------|
| Schedule A - Real Estate                   | \$370,000.00  |
| Schedule B - Investments                   |               |
| Schedule C - Anticipated Annual Receipts   | 39504.00      |
| Schedule D - Life Insurance                | 12500.00      |
| Schedule E - Jointly Owned Property        | 0             |
| Schedule F - Other Miscellaneous           | 0             |
| Schedule G - Transfers prior to incapacity | 0             |
| Schedule H - Powers of Appointment         | 0             |
| Schedule I - Annuities                     |               |
| TOTAL GROSS VALUE                          | \$            |
| ENCUMBRANCES                               | ( )           |
| TOTAL NET WORTH                            | \$ 422,004.00 |

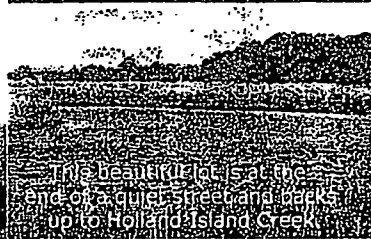
\*Within thirty (30) days following appointment, the original inventory shall be filed with the Probate Court. A copy must be provided to the protected person, if he/she has attained the age of 14 years, and to any parent or guardian with whom the protected person resides and to other interested persons as directed by the Court.

# Just Listed! Must see to appreciate!



**\$350,000**

Build the home of your dreams on this beautiful piece of property.



This beautiful lot is at the end of a quiet street and backs up to Holland Island Creek.



With exception of storage buildings/minor cleanup, this property is ready to build on.



Mature palms & oak trees

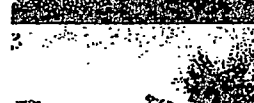


Public boat landing less than 1 mile away.

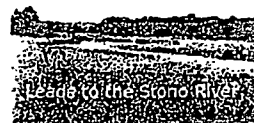
- o Beautiful 4.1 acre property on James Island.
- o Located at the end of very quiet Shrimp Street.
- o Deep water access & possibility of dock permit.
- o Great opportunity to build the home of your dreams - on the lot of your dreams!
- o Great investment opportunity!
- o .9 acres highland with 3.2 acres marsh.
- o Northern & Eastern sides of property are bordered by Holland Island Creek, which accesses the Stono River, less than 2 miles away.
- o Acres and acres of beautiful, unspoiled, natural views from this property!!
- o Public boat landing less than 1 mile away.
- o Folly Beach is just 2 minutes away.
- o Downtown Charleston & the Connector are just 10 minutes away.
- o **DON'T MISS THIS GOLDEN OPPORTUNITY!**



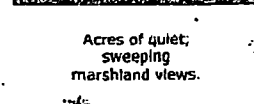
Unspoiled beauty!



Front of property



Leads to the Stono River



Acres of quiet, sweeping marshland views.



24. **ENFORCEMENT:** The parties agree that Broker may take action to enforce this Agreement or collect any associated costs, fees, and damages. Owner agrees to reimburse or indemnify or pay all Broker costs in enforcing this Agreement or collecting costs, fees, and damages including any incidental expenses or attorneys fees.

25. **OTHER TERMS AND CONDITIONS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE UNDERSIGNED HEREBY WARRANTS THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Owner: Henry Myers Mrs Willie W Myers Date 02/13/2008 Time 12:20 pm  
Henry Myers

Email: \_\_\_\_\_ Phone: 810-1471 Fax: \_\_\_\_\_

Witness: Bernice M. McClary Date 02/13/2008 Time 12:22

Owner: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Witness: \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Owner's Mailing Address: 301 Lexington Avenue  
Kingstree, SC 29556-3607

Real Estate Firm: EXIT REALTY HOME STORE Phone: \_\_\_\_\_

By: [Signature] Date 13 Feb 08 Time 12:30

My Commission Expires  
April 27, 2016

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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Form 220  
PAGE 5 OF 5

**J. Al Cannon, Jr.**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------|--|----------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------|--|-----------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----|--|
| SC0100000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | DISPATCH NUMBER<br>2008-006122B                                             |  | ORIGINAL CASE NUMBER                                                                                                              |  | PAGE 1 OF 1 PAGES                                 |  | NIC# ENTRY                                                                                   |  | INQ. ENT.                                                                           |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| 1. TRESPASSING                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                             |  | INCIDENT TYPE                                                                                                                     |  | INCIDENT CODE                                     |  | COMPLETED<br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO             |  | FORCED ENTRY<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |  | PREMISE TYPE<br>RESIDENCE                     |  | TYPE VICTIM<br><input checked="" type="checkbox"/> INDIVIDUAL<br><input type="checkbox"/> BUSINESS<br><input type="checkbox"/> FINANCIAL INST.<br><input type="checkbox"/> GOVERNMENT<br><input type="checkbox"/> RELIG. ORG.<br><input type="checkbox"/> SOC. PUB.<br><input type="checkbox"/> OTHER<br><input type="checkbox"/> UNKNOWN<br><input type="checkbox"/> POLICE OFF. |  |     |  |
| 2.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                             |  |                                                                                                                                   |  |                                                   |  | <input type="checkbox"/> YES <input type="checkbox"/> NO                                     |  | <input type="checkbox"/> YES <input type="checkbox"/> NO                            |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| 3.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                             |  |                                                                                                                                   |  |                                                   |  | <input type="checkbox"/> YES <input type="checkbox"/> NO                                     |  | <input type="checkbox"/> YES <input type="checkbox"/> NO                            |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| INCIDENT LOCATION:<br>2085 SHRIMP ST JAMES ISLAND                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                             |  |                                                                                                                                   |  | ZIP CODE<br>29412                                 |  | WEAPON TYPE<br>N/A                                                                           |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| BEGINNING INCIDENT DATE<br>03/01/08                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  | 24 HR. CLOCK                                                                |  | ENDING INCIDENT DATE<br>03/19/08                                                                                                  |  | 24 HR. CLOCK                                      |  | DISP. DATE<br>03/20/08                                                                       |  | DISP. TIME<br>1033                                                                  |  | TIME ARRIVED<br>1033                          |  | DEPART TIME<br>1350                                                                                                                                                                                                                                                                                                                                                               |  |     |  |
| NAME: (LAST, FIRST, MIDDLE)<br>MYERS-TAYLOR, MELBA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                             |  |                                                                                                                                   |  | RELATIONSHIP TO SUBJECT<br>STRANGER               |  | RESIDENTIAL RACE<br>J                                                                        |  | SEX<br>B                                                                            |  | AGE<br>52                                     |  | DOB<br>05/22/55                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| HEIGHT<br>503                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  | WEIGHT<br>200                                                               |  | HAIR<br>GRY                                                                                                                       |  | EYES<br>BRO                                       |  | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                  |  |                                                                                     |  | DRIVERS LIC / ID & STATE<br>SC-007443029      |  | SOCIAL SECURITY #                                                                                                                                                                                                                                                                                                                                                                 |  |     |  |
| ADDRESS #<br>2085                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | STREET NAME<br>SHRIMP ST                                                    |  | CITY<br>JAMES ISLAND                                                                                                              |  | STATE<br>SC                                       |  | ZIP CODE<br>29412                                                                            |  | DAY PHONE<br>795-2648                                                               |  | EVENING PHONE<br>795-2648                     |  | H                                                                                                                                                                                                                                                                                                                                                                                 |  |     |  |
| OCCUPATION<br>RETIRED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                             |  | EMPLOYER<br>NONE                                                                                                                  |  |                                                   |  | ALIAS<br>NONE                                                                                |  |                                                                                     |  | NIC #                                         |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| NAME: (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                                                                             |  |                                                                                                                                   |  | RELATIONSHIP TO SUBJECT                           |  | RESIDENTIAL RACE                                                                             |  | SEX                                                                                 |  | AGE                                           |  | DOB                                                                                                                                                                                                                                                                                                                                                                               |  |     |  |
| HEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | WEIGHT                                                                      |  | HAIR                                                                                                                              |  | EYES                                              |  | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                  |  |                                                                                     |  | DRIVERS LIC / ID & STATE                      |  | SOCIAL SECURITY #                                                                                                                                                                                                                                                                                                                                                                 |  |     |  |
| ADDRESS #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | STREET NAME                                                                 |  | CITY                                                                                                                              |  | STATE                                             |  | ZIP CODE                                                                                     |  | DAY PHONE                                                                           |  | EVENING PHONE                                 |  | H                                                                                                                                                                                                                                                                                                                                                                                 |  |     |  |
| <input type="checkbox"/> VISIBLE INJURY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | <input type="checkbox"/> NO <input type="checkbox"/> YES                    |  | <input type="checkbox"/> COMPLAINT OF NON-VISIBLE INJURIES<br><input checked="" type="checkbox"/> NO <input type="checkbox"/> YES |  | USING ALCOHOL                                     |  | <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNK        |  | <input type="checkbox"/> TWO-WAY VEHICLE                                            |  | <input type="checkbox"/> DETECTIVE SPLASHY    |  | <input type="checkbox"/> ALONE                                                                                                                                                                                                                                                                                                                                                    |  |     |  |
| EXPLAIN OCCUPATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | EMPLOYER                                                                    |  | ALIAS                                                                                                                             |  | NIC #                                             |  | <input type="checkbox"/> DRUGS <input type="checkbox"/> NO <input type="checkbox"/> YES TYPE |  | <input type="checkbox"/> UNK                                                        |  | <input type="checkbox"/> ONE-WAY VEHICLE      |  | <input type="checkbox"/> OTHER <input type="checkbox"/> ASSISTED                                                                                                                                                                                                                                                                                                                  |  |     |  |
| <input type="checkbox"/> COMPLAINANT<br><input type="checkbox"/> VICTIM #<br><input type="checkbox"/> SUSPECT #<br><input checked="" type="checkbox"/> SUBJECT #<br><input type="checkbox"/> WITNESS #<br><input type="checkbox"/> WANTED<br><input type="checkbox"/> WARRANT<br><input type="checkbox"/> ARREST<br><input type="checkbox"/> RUNAWAY<br><input type="checkbox"/> MISSING PERSON                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                             |  |                                                                                                                                   |  | NAME: (LAST, FIRST, MIDDLE)<br>SMITH, LAURENCE D. |  | RELATIONSHIP TO SUBJECT                                                                      |  | RESIDENTIAL RACE                                                                    |  | SEX                                           |  | AGE                                                                                                                                                                                                                                                                                                                                                                               |  | DOB |  |
| HEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | WEIGHT                                                                      |  | HAIR                                                                                                                              |  | EYES                                              |  | FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                  |  |                                                                                     |  | DRIVERS LIC / ID & STATE<br>SC-007443029      |  | SOCIAL SECURITY #                                                                                                                                                                                                                                                                                                                                                                 |  |     |  |
| ADDRESS #<br>10050 SUITE 110                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | STREET NAME<br>DORCHESTER RD                                                |  | CITY<br>SUMMERVILLE                                                                                                               |  | STATE<br>SC                                       |  | ZIP CODE<br>29485                                                                            |  | DAY PHONE<br>8733-0021                                                              |  | EVENING PHONE<br>224-4591                     |  | B                                                                                                                                                                                                                                                                                                                                                                                 |  |     |  |
| <input type="checkbox"/> VISIBLE INJURY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | <input type="checkbox"/> NO <input type="checkbox"/> YES                    |  | <input type="checkbox"/> COMPLAINT OF NON-VISIBLE INJURIES<br><input type="checkbox"/> NO <input type="checkbox"/> YES            |  | USING ALCOHOL                                     |  | <input type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> UNK        |  | <input type="checkbox"/> TWO-WAY VEHICLE                                            |  | <input type="checkbox"/> DETECTIVE SPLASHY    |  | <input type="checkbox"/> ALONE                                                                                                                                                                                                                                                                                                                                                    |  |     |  |
| EXPLAIN OCCUPATION<br>REAL ESTATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | EMPLOYER<br>EXIT REAL ESTATE CO.                                            |  | ALIAS<br>NONE                                                                                                                     |  | NIC #<br>N/A                                      |  | <input type="checkbox"/> DRUGS <input type="checkbox"/> NO <input type="checkbox"/> YES TYPE |  | <input type="checkbox"/> UNK                                                        |  | <input type="checkbox"/> ONE-WAY VEHICLE      |  | <input type="checkbox"/> OTHER <input type="checkbox"/> ASSISTED                                                                                                                                                                                                                                                                                                                  |  |     |  |
| (A) CHARGE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                             |  |                                                                                                                                   |  | (C) CHARGE                                        |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| (B) CHARGE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                             |  |                                                                                                                                   |  | (D) CHARGE                                        |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| -SOL LEGARE- Compl, Myers-Taylor, says that Exit Real Estate Company posted "For Sale" signs on her father's property. Myers-Taylor says that to get to her fathers land, they had to cross her land which is plainly posted "No Trespassing". Myers-Taylor says she talked with the listing agent from Exit Real Estate and told the agent that they had trespassed when they had crossed her property to post the signs.<br>R/D talked with Subj, Smith, and he said that yes, they did talk with Myers-Taylor and Ms. Myers-Taylor was upset. He said threats of a lawsuit were exchanged. Smith did say they would not cross Myers-Taylor's property again, they had been given temporary permission from another neighbor to access the property without having to go on Myers-Taylor's property. |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| TYPE (GROUP)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  | TOTAL VALUE                                   |  | JURISDICTION OF THEFT<br>LAW ENFORCEMENT AGENCY                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| STOLEN                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| DAMAGED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| BURNED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| RECOVERED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| SEIZED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| SUBJECT IDENTIFIED<br><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | SUBJECT LOCATED<br><input type="checkbox"/> YES <input type="checkbox"/> NO |  | <input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED                                                   |  | <input type="checkbox"/> ARRESTED UNDER 18        |  | <input type="checkbox"/> ARRESTED 18 AND OVER                                                |  | <input type="checkbox"/> EX-CLEAR UNDER 18                                          |  | <input type="checkbox"/> EX-CLEAR 18 AND OVER |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE NO CUSTODY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |
| REPORTING OFFICER(S)<br>MOEP T. A. LAWSON                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                             |  | DATE<br>03/20/08                                                                                                                  |  | BADGE NUMBER<br>874B                              |  | APPROVING OFFICER<br>[Signature]                                                             |  |                                                                                     |  | DATE<br>03/20/08                              |  | BADGE NUMBER<br>8879                                                                                                                                                                                                                                                                                                                                                              |  |     |  |
| FOLLOW-UP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                             |  |                                                                                                                                   |  |                                                   |  |                                                                                              |  |                                                                                     |  |                                               |  |                                                                                                                                                                                                                                                                                                                                                                                   |  |     |  |

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
CASE NO.: 2011-CP-10-2026

Jerome Myers and Gloria Myers, )  
Plaintiffs, )

vs. )

Cezar E. McKnight, Willie O.W. )  
McFadden-Myers, and Latonya )  
Hobson, )  
Defendants.)

ORIGINAL

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TRANSCRIPT OF PROCEEDINGS  
HEARING ON MOTIONS  
BEFORE JUDGE W. JEFFREY YOUNG  
ON JULY 23, 2012

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A P P E A R A N C E S

For the Plaintiffs:  
JEROME MYERS  
GLORIA MYERS

For the Defendants:  
CEZAR EDWARD MCKNIGHT

---

ROLAYNE M. VOLPE, CCR, RPR  
Official Court Reporter for the Ninth Judicial Circuit  
Charleston, South Carolina 29413  
RolayneVolpe@sccourts.org

I N D E X

## DESCRIPTION

## PAGE

PROCEEDINGS

4

REPORTER'S CERTIFICATE

14

E X H I B I T S

## DESCRIPTION

## PAGE

(No exhibits were marked during the proceedings.)

Reported By:  
ROLAYNE M. VOLPE, CCR, RPR

1           The above-styled cause came on for hearing of  
2 motions on the 23rd day of July, 2012, at 11:48 a.m., before  
3 Judge Jeffrey Young, Judge At Large, serving today in the  
4 Ninth Judicial Circuit Court for the County of Charleston,  
5 when the following proceedings were had and entered of  
6 record, to wit:

7                           PROCEEDINGS

8                           MOTIONS HEARING

9           THE COURT: Thank you. Please be seated.  
10          All right, sir. What is the next case?  
11          THE CLERK: 2011-2026, Myers versus McKnight.  
12          THE COURT: Let me review the file for a moment.  
13          THE CLERK: We have five different motions.  
14          THE COURT: Are these plaintiff or defense  
15 motions?  
16          THE CLERK: A mix.  
17          THE COURT: A mix.  
18          THE CLERK: Three plaintiff, two defense.  
19          THE COURT: Okay. I think there might be a mistake  
20 here. I've got a motion to -- to reconsider a case that I  
21 haven't heard. It's Roger Young, not Jeffrey Young. I  
22 don't know that I'm going to be able to hear that. Would  
23 y'all rather have Judge Roger Young hear everything since  
24 he's apparently been involved with this? And that may have  
25 been some scheduling problems. Because I'm looking at a

1 Form 4, says that the Plaintiffs' Motion to Amend and  
2 Reconsider must be heard by Roger Young.

3 THE CLERK: Okay. That's not on our --

4 THE COURT: That's not before us today?

5 THE CLERK: No, sir.

6 THE COURT: Okay. What's before us today?

7 THE CLERK: We have a Motion for a Jury Trial by  
8 the Plaintiff, Motion to Dismiss by Plaintiff, Motion for  
9 Summary Judgment by Plaintiff, Motion to Amend Pleadings by  
10 Defendant, and Motion for Summary Judgment by Defendant.

11 THE COURT: Okay. Then -- then that -- we can go  
12 ahead with those, then. As long as it's not a motion to  
13 reconsider something I've never considered before. I've got  
14 to put that one aside.

15 Plaintiffs are asking -- here's one -- I guess the  
16 first one that -- you're asking to dismiss your case?

17 MR. MYERS: No.

18 THE COURT: Plaintiffs have asked that the Court  
19 dismiss with prejudice. . .

20 MS. MYERS: Dismiss the case of the Defendants  
21 requesting to amend.

22 THE COURT: Okay. So this -- Okay. Objection to  
23 motion. . .

24 I guess I'm just trying to figure out -- it looks  
25 like one we do have is Plaintiffs' Motion for Summary

1 Judgment.

2 MS. MYERS: Yes. But that was already settled as  
3 well.

4 THE COURT: That's settled as well?

5 MS. MYERS: Uh-huh.

6 THE COURT: Who settled it?

7 MS. MYERS: It was settled through -- we had  
8 judgment under McDonald. But then the case was still open.

9 MR. McKNIGHT: Your Honor?

10 THE COURT: Yes.

11 MR. McKNIGHT: If I may, for some clarity?

12 THE COURT: Yes, sir.

13 MR. McKNIGHT: The Plaintiffs filed a suit against  
14 several defendants. There was an order -- there was an  
15 order dismissing some of the parties. Grant and -- that was  
16 issued on -- and that was issued by --

17 THE COURT: Yeah, I see that.

18 MR. McKNIGHT: Right. So the parties that only  
19 remain are myself --

20 THE COURT: Okay.

21 MR. McKNIGHT: -- Ms. McFadden -- I'm  
22 sorry, Ms. Myers -- Ms. McFadden-Myers, pardon me,  
23 and Ms. Hobson. Those other -- that other issue -- those  
24 other issues with the other parties, like Mr. Christensen  
25 and the others, those -- those have been disposed of. Those

1 matters have been disposed of.

2 THE COURT: So I guess the only thing we're doing  
3 is the ones concerning Mr. Cezar McKnight?

4 MR. McKNIGHT: Yeah, McKnight -- I'm going to  
5 represent -- I'm representing myself, Ms. McFadden-Myers,  
6 and Ms. Hobson, your Honor.

7 THE COURT: Okay. Which motion do you want to hear  
8 first?

9 MR. MYERS: Well --

10 THE COURT: Stand when you speak to the Court, just  
11 like him.

12 MR. MYERS: We're going -- Judge McDonald --  
13 McDonald had ruled a default on -- on Mr. McKnight. And on  
14 May the 28th -- May the 2nd, 2012, under Rule 15(e), and we  
15 are going on the Judge ruling that against him in default.

16 MR. McKNIGHT: Your Honor, if I may?

17 THE COURT: Yes, sir.

18 MR. McKNIGHT: The Court -- they filed a -- there  
19 was a Request to Admit filed. We did not answer those  
20 requests to admit in time, and Judge McDonald issued an  
21 order deeming that those requests to admit be admitted --

22 THE COURT: Okay.

23 MR. McKNIGHT: -- to the Court.

24 THE COURT: That would be normal. Yeah.

25 MR. McKNIGHT: Yeah. That's what -- that's --

1 that's what we -- that's what's -- that's what he's  
2 referring to.

3 MR. MYERS: And the Judge ruled on it.

4 THE COURT: Okay. Well, that doesn't mean you won  
5 the case, though. It means that those issues have been  
6 resolved.

7 MR. MYERS: Okay.

8 THE COURT: So he can't put up evidence to the  
9 contrary at a trial.

10 MR. MYERS: Right.

11 THE COURT: So on that -- I guess that's resolved.  
12 That doesn't mean you win the case.

13 MR. MYERS: I see.

14 THE COURT: So just -- just saying, yeah, those  
15 facts, but that fact may not win the case for you.

16 Okay. That's that issue. What's your next issue?

17 MR. MYERS: Okay. The next issue, we filed summary  
18 judgment.

19 THE COURT: Summary judgment.

20 MR. MYERS: Yeah. To go to trial.

21 THE COURT: All right. So this would be the motion  
22 that was filed on May 17th?

23 MS. MYERS: That's correct.

24 THE COURT: Okay. Plaintiffs', Myers, Motion for  
25 Summary Judgment Liability.

1 MS. MYERS: Yes.

2 THE COURT: Is that the one we're here today to  
3 discuss; is that your understanding?

4 MR. McKNIGHT: Your Honor, that's their motion.  
5 Yes, sir. We have our own.

6 THE COURT: Right. Okay.

7 MR. McKNIGHT: Yes, sir.

8 THE COURT: All right. I'll hear from you.

9 MR. MYERS: Sir, the Motion of Summary Judgment was  
10 to be filed at -- he did not answer none of the questions on  
11 time, and we got the evidence that -- where he admitted  
12 fraudury [sic], agree with, they saw my father sign some  
13 paper for Power of Attorney over the estate. And -- and my  
14 stepmother, she -- she agree with it, and her granddaughter  
15 agree with it, that they saw my daddy sign the paperwork, to  
16 be a -- give her the Power of Attorney for Ms. Myers over  
17 the estate. And we send the paper off to have an expert  
18 stipulate that it was fraud. My father never signed that  
19 paperwork.

20 THE COURT: Well, I think there's a motion for a  
21 trial in here as well.

22 MR. MYERS: Correct.

23 THE COURT: Mr. --

24 MR. McKNIGHT: Your Honor, as far as I'm concerned,  
25 we're at the mercy of the Clerk. As soon as we get to

1 trial, we'll be -- absent any other actions by the Court  
2 before.

3 THE COURT: Yeah. I'm going to go ahead and allow  
4 you the trial.

5 MR. MYERS: Yes, sir.

6 THE COURT: You're certainly entitled to that. But  
7 I don't know that I'm going to rule on summary judgment. Of  
8 course, you're going to be able to present what evidence  
9 that you have.

10 MR. MYERS: Okay.

11 THE COURT: Not just affidavits. But you're going  
12 to have to produce evidence.

13 MR. MYERS: Right.

14 THE COURT: Of course, your request to admissions  
15 will be submitted to the Court at that point in time.

16 MR. McKNIGHT: Yes, sir.

17 MR. MYERS: Okay.

18 THE COURT: So I guess what I need to do is just  
19 move this to the jury trial --

20 MR. MYERS: Right.

21 THE COURT: -- docket.

22 MR. MYERS: That's what we want.

23 THE COURT: He has motions as well. So let me hear  
24 his motions and see where we go.

25 Mr. McKnight?

1 MR. McKNIGHT: Thank you, your Honor. May it  
2 please the Court. Good afternoon.

3 We have -- we filed a Motion to Amend the Pleadings  
4 Pursuant to Rule 15(a) of the South Carolina Rules of  
5 Criminal -- I'm sorry -- South Carolina Rules of Civil  
6 Procedure. Your Honor, we are asking the Court to allow us  
7 to amend the pleadings so that we can add an affirmative  
8 defense, and that being, the statute of limitations in this  
9 matter. This matter was filed on March 11th -- I'm sorry,  
10 March 17, 2011, and the alleged -- the allegations in this  
11 lawsuit take place sometime in 2007, beyond the statute of  
12 limitations. We ask the Court to allow us to amend and --  
13 so that we can make that affirmative defense, your Honor.

14 THE COURT: Does the Plaintiff have any objection  
15 to their --

16 MR. MYERS: I have objections, sir. He  
17 had -- he had enough time to -- to answer all the papers,  
18 under Rule 15(e), and he didn't do it. Now he want to --  
19 we -- we --

20 THE COURT: It's my discretion on that. We  
21 liberally allow -- if you hadn't included something, I would  
22 allow you to amend your pleadings. I will allow him to  
23 amend his Answer.

24 MR. McKNIGHT: Thank you. Your Honor, would the  
25 Court like for me to prepare an order, or are you going to

1 do a Form 4?

2 THE COURT: Please prepare me an order.

3 MR. McKNIGHT: Yes, sir.

4 THE COURT: And send them a copy.

5 MR. McKNIGHT: Yes, sir, your Honor. And to where  
6 do you want me to send your order?

7 THE COURT: Send it to Sumter, to my Sumter office.

8 MR. McKNIGHT: Sumter office.

9 THE COURT: 141 North Main Street. And please  
10 prepare that within ten days, sending them a copy, and then  
11 the case will move on to the jury trial docket.

12 MR. McKNIGHT: Yes, sir. And, your Honor, would  
13 you -- my other question --

14 THE COURT: Or if you want to get me an order  
15 before the end of this week, I will be here all week.

16 MR. McKNIGHT: Okay. It would be -- probably -- it  
17 probably will come via fax, or maybe I'll e-mail it to -- if  
18 I could have your Clerk's E-mail address, that would --

19 THE LAW CLERK: Wyounglc@sccourts, with an S at the  
20 end --

21 MR. McKNIGHT: Yes, sir.

22 THE LAW CLERK: -- dot org.

23 MR. McKNIGHT: Thank you.

24 THE COURT: All right. And also put in there that  
25 their motion to have a jury trial is granted.

1 MR. McKNIGHT: Yes, sir.

2 Your Honor, with regard to our Motion for Summary  
3 Judgment, we sort of jumped the gun on that, realizing that  
4 we had not yet filed --

5 THE COURT: After you've -- after you file your  
6 Amended Answer, if you want to redo your Motion for Summary  
7 Judgment, I will hear that -- or somebody will hear it at  
8 that time.

9 MR. McKNIGHT: Thank you, Judge.

10 THE COURT: Thank you.

11 MS. MYERS: Thank you very much.

12 THE COURT: Thank y'all.

13 MR. McKNIGHT: Permission to approach the Court?

14 THE COURT: Yes, sir.

15 (Time is 11:59 a.m.)

16 (Mr. McKnight approaches the bench, and a  
17 discussion is held off the record.)

18 (Back on the record.)

19 MR. McKNIGHT: Your Honor, am I correct in telling  
20 the Clerk that we're holding that Motion for Summary  
21 Judgment in abeyance until after the amended pleadings --

22 THE COURT: Really, probably ought to leave them  
23 out.

24 MR. MYERS: So my summary judgment still stands;  
25 right? Am I following the Court record --

1           THE COURT: It's not -- Well, you may want to hold  
2 off until after he files his Amended Complaint.

3           MR. MYERS: Okay.

4           THE COURT: I'm not dismissing anything.

5           MR. MYERS: Okay. Fine.

6           THE COURT: But after that, you may want to file an  
7 amended motion as well.

8           MS. MYERS: Thank you. That's all we need to know.  
9 But this still stands?

10          THE COURT: Yes, sir. I hadn't dismissed anything.

11          MR. MYERS: But Ms. Shelly All --

12          THE COURT: Who?

13          MR. MYERS: Ms. Shelly All. Another case  
14 that -- let me see.

15          THE COURT: I don't know anything about that. I'm  
16 just down here for this week doing what they tell me to do.  
17 If they didn't tell me to do it, I'm not doing it.

18          MR. MYERS: All right.

19          THE CLERK: That's it for this morning. Back at  
20 2:30.

21          THE COURT: Court's in recess until 2:30.

22          (The hearing of this cause concluded at  
23 12:01 p.m., on July 23rd, 2012.)

24

25

REPORTER'S CERTIFICATE

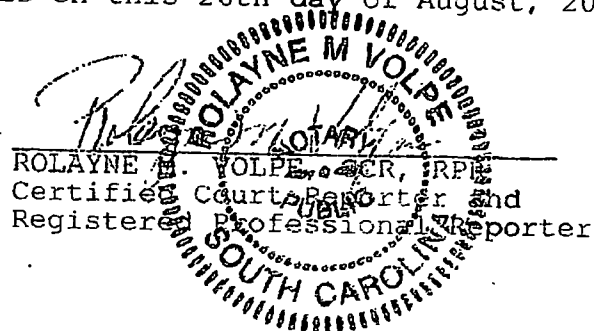
STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON ) ss.

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 26th day of August, 2012.

ORIGINAL



Reported By:  
ROLAYNE M. VOLPE, CCR, RPR

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
JEROME MYERS & GLORIA )  
MYERS, )  
Plaintiffs, )  
v. )  
CEZAR E. MCKNIGHT, )  
WILLIE O.W. MCFADDEN- )  
MYERS, & LATONYA HOBSON, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2011-CP-10-2026

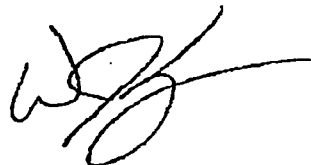
ORDER GRANTING DEFENDANT'S  
MOTION TO AMEND THEIR  
ANSWER AND DENYING  
PLAINTIFF'S & DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGEMENT

FILED  
2012 JUL 26 AM 9:25  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter came before the Court for a hearing on July 23, 2012, for consideration of a number of motions including: 1) Plaintiff's Motion for Summary Judgment, 2) Defendant's Motion for Summary Judgment and Defendant's Motion to Amend Pleading. Pro se Plaintiffs and counsel for the Defendants were present and this Court entertained and considered oral arguments.

#### FACTS

Pro se, sibling Plaintiffs bring this action alleging misrepresentation, fraud, and forgery regarding a power of attorney for their father. Defendants have filed a Motion to Amend Pleadings pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure (SCRPC) and a Motion for Summary Judgment



Pursuant to Rule 56(e) of the SCRCP. The Plaintiff's have filed a Motion for Summary Judgment Rule (56(e).

**DEFENDANT'S MOTION TO AMEND PLEADING**

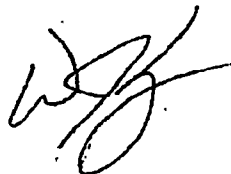
Leave to amend pleadings "shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a) S.C.R.Civ.P. This Court finds that the amendment adds to the Defendants' Answer the affirmative defense that the statute of limitations in this matter has run. This Court further finds that granting the Defendants leave to amend the Answer is in the interest of justice and will not prejudice the Plaintiffs. Therefore, for the aforementioned reasons, Defendants' Motion to Amend Pleading is granted.

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants withdrew their Motion for Summary Judgment and as a result the Defendants' Motion for Summary Judgment is dismissed without prejudice.

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Summary judgment is only appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of fact. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 627, 541 S.E.2d 831, 833 (2001). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom must viewed in the light most favorable to the nonmoving party. Id.

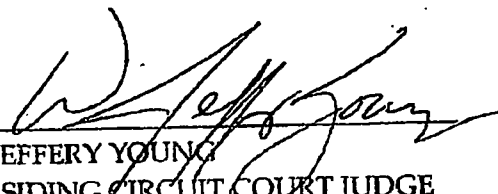


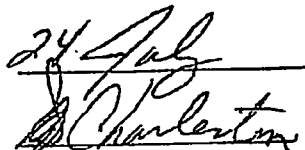
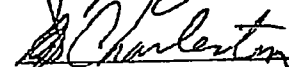
After review, this Court finds that genuine issues of fact exists and Plaintiffs are not entitled to judgment as a matter of law and therefore summary judgment is not appropriate at this time. The Plaintiffs' Motion for Summary Judgment is denied for this reason.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Defendants' Motion to Amend Pleading is **GRANTED**.
2. Defendants' Motion for Summary Judgment is **DENIED**.
3. Plaintiffs' Motion for Summary Judgment is **DENIED**.

AND IT IS SO ORDERED!

  
W. JEFFERY YOUNG  
PRESIDING CIRCUIT COURT JUDGE  
COURT OF COMMON PLEAS

 2012  
 Charleston, South Carolina

|                                |   |                            |
|--------------------------------|---|----------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE CIRCUIT COURT       |
|                                | ) | NINTH JUDICIAL CIRCUIT     |
| COUNTY OF CHARLESTON           | ) |                            |
|                                | ) |                            |
| Jerome Myers and Gloria Myers, | ) | CASE NO. 2011-CP-10-2026   |
|                                | ) |                            |
| PLAINTIFFS,                    | ) |                            |
|                                | ) |                            |
| VS.                            | ) | Charleston, South Carolina |
|                                | ) |                            |
| Shelly K. All, Cezar E.        | ) |                            |
| McKnight, Ms. Willie O.W.      | ) |                            |
| McFadden-Myers, and Latonya    | ) |                            |
| Hobson,                        | ) |                            |
|                                | ) |                            |
| DEFENDANTS.                    | ) |                            |

## TRANSCRIPT OF RECORD

(A certification sheet will be attached bearing an original signature in blue ink  
if this transcript has been certified by the court reporter.)

### COMMENCING:

April 24, 2012 at 10:15 a.m.

Before The Honorable Stephanie P. McDonald

### APPEARANCES:

Plaintiffs: Jerome Myers and Gloria Myers, Pro Se

Defendants: Cezar Edward McKnight, Esquire  
Shelly K. All, Esquire

*Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter*  
100 Broad Street, Suite 236, Charleston, SC 29401  
(843) 958-5083 [PNorton@sccourts.org](mailto:PNorton@sccourts.org)

INDEX

PROCEEDING - Page 3

NO SWORN TESTIMONY

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT - See Page 22

A transcript certified by the court reporter will bear an original signature on the attached certification sheet. Please contact the court reporter for additional certified transcripts.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: All right. And I see we have a couple of  
2 motions, motion to compel and motion to amend?

3 MS. MYERS: Yes.

4 THE COURT: Okay. Happy to hear from ---

5 MS. MYERS: Good morning. I am Gloria Myers, pro se.  
6 And this is my brother Jerome Myers, pro se. And we came  
7 before you, Judge, for a motion -- motion for compelling  
8 being requested by plaintiff.

9 And we are asking for admission, admit, and to compel  
10 discovery for Defendant McKnight. We were asking that he  
11 file his answer. We sent him some -- thought -- you know,  
12 some questions and voluntary withdrawal from the case due to  
13 conflict of interest. Four months later the defendant had  
14 not received a response to this letter either of (inaudible)  
15 request for admission ---

16 THE COURT: I'm sorry, ma'am?

17 MS. MYERS: Either of questions that we request for  
18 admission.

19 THE COURT: Okay. When did you serve the request to  
20 admit on him?

21 MS. MYERS: We served that on September -- served that  
22 on September the 30th.

23 THE COURT: On September 30th?

24 MS. MYERS: Uh-huh.

25 THE COURT: And have you received any response at all?

1 MS. MYERS: No, it was November the 26th.

2 THE COURT: Okay. Of 2011?

3 MS. MYERS: Of 2011. And we have not received anything  
4 from him at all except for recently where he sent us a  
5 letter. Okay, he sent us a letter stating that -- that come  
6 from now and defended by and through their counsel, Cezar  
7 McKnight, Esquire, through the South Carolina Rules of Civil  
8 Procedure Rule 56 and notify you on the 10th day as soon  
9 as -- hereafter ---

10 THE COURT: I tell you what, ma'am, could you hand -- I  
11 might take a look at that.

12 MS. MYERS: Okay.

13 THE COURT: It would be easier for me.

14 MS. MYERS: All right.

15 THE COURT: If somebody could bring it up.

16 THE DEPUTY: I will.

17 THE COURT: Thank you, sir. And I will give it right  
18 back to you.

19 MS. MYERS: Okay.

20 THE COURT: I just want to take a look at it. Thank  
21 you.

22 THE COURT: Okay. I am looking at a letter dated  
23 April 16, 2012. Is that what you are ---

24 MS. MYERS: Yes, that is the letter that he sent us.

25 THE COURT: Those don't -- this doesn't address the

1 request to admit.

2 MS. MYERS: No, but that's ---

3 THE COURT: Do you have anything from him that  
4 addresses ---

5 MS. MYERS: No.

6 THE COURT: --- the request to admit?

7 MS. MYERS: No.

8 THE COURT: Okay. Let me hear from the defendant ---

9 MS. MYERS: Okay.

10 THE COURT: --- and then I will hear back from you  
11 again.

12 MS. MYERS: All right.

13 THE COURT: Yes, sir. How about the request to admit?

14 MR. MCKNIGHT: Thank you, Your Honor, may it please the  
15 court. Just as for a matter of efficient -- for the matter  
16 of efficiency, there is a motion to dismiss pursuant to them  
17 failing to meet the statute of limitations. And I think if  
18 you address that matter the necessity of replying to their  
19 request to admit and/or discovery request is moot.

20 THE COURT: When was the motion to dismiss filed?

21 MR. MCKNIGHT: It was filed on April 16th, 2012.

22 THE COURT: No, sir. Are you Mr. McKnight?

23 MR. MCKNIGHT: I am.

24 THE COURT: Okay. And you are the defendant?

25 MR. MCKNIGHT: I am one of the defendants; yes, I am.

1 THE COURT: Okay. Were you properly served with the  
2 request to admit?

3 MR. MCKNIGHT: I was.

4 THE COURT: Okay. And you have not answered them at  
5 all?

6 MR. MCKNIGHT: I have not.

7 THE COURT: Okay. Explain to me why not.

8 MR. MCKNIGHT: Your Honor, because number one this  
9 process is very convoluted, so let me explain exactly what  
10 is going on. This matter stems from a matter out of probate  
11 court where I represented their ex mother-in-law.

12 THE COURT: Okay.

13 MR. MCKNIGHT: Well, not their ex mother-in-law, their  
14 mother-in-law. She is still married to him. This matter  
15 was thoroughly adjudicated properly before the court and all  
16 of their allegations are -- have already been ruled upon by  
17 the probate court.

18 Primarily their allegations which based upon what they  
19 have pled I can't even tell because that is why we made the  
20 motion to dismiss pursuant to twelve -- for them failing to  
21 comply -- I'm sorry ---

22 THE COURT: Right, but I guess my point is the motion  
23 to dismiss was made what, a week ago?

24 MR. MCKNIGHT: Yes, ma'am. And as my understanding of  
25 the law we at any time can raise the issue of statute of --

1 of violating the statute of limitations.

2 THE COURT: Is there an answer that has been filed?

3 MR. MCKNIGHT: An answer by whom?

4 THE COURT: By you. Are you not ---

5 MR. MCKNIGHT: Yes, I have filed an answer.

6 THE COURT: Okay. Did you plead the statute of  
7 limitations as an affirmative defense?

8 MR. MCKNIGHT: I did not. But we denied all of their  
9 allegations within there. But, Your Honor, by me -- but  
10 that still doesn't preclude me from raising the issue of  
11 statute of limitations.

12 THE COURT: You may have waived it.

13 MR. MCKNIGHT: Pursuant to which holding in which --  
14 which -- which case law ---

15 THE COURT: Sir, you need to give me some law. But I  
16 will pull it up for you in just a second. What I need you  
17 to do for me ---

18 MR. MCKNIGHT: Okay.

19 THE COURT: --- is explain why you didn't answer their  
20 request for admission or object to them.

21 MR. MCKNIGHT: Your Honor, the only -- we did not in  
22 anticipation of me filing this motion which is to dismiss.  
23 And beyond that, Your Honor, we have also filed -- we have  
24 also filed a motion pursuant to Rule 56 because for them  
25 failing to pay the claim for which ---

1 THE COURT: When was ---

2 MR. MCKNIGHT: -- for which it would be granted.

3 THE COURT: Well, actually I think that is a 12(b)  
4 motion, but ---

5 MR. MCKNIGHT: Yeah, that is a 12(b) motion, but you  
6 have to also plead that Rule 56 as well. It is ---

7 THE COURT: When did you file that?

8 MR. MCKNIGHT: That was filed on April 16th ---

9 THE COURT: Well, they get ten days of notice for any  
10 kind of hearing on a motion for summary judgment, Mr.  
11 McKnight.

12 MR. MCKNIGHT: But they have already answered, Your  
13 Honor. They filed an answer -- they filed a response to it.

14 THE COURT: Right. But they don't have to have a  
15 hearing for ten days ---

16 MR. MCKNIGHT: Okay.

17 THE COURT: --- if they don't want to.

18 MR. MCKNIGHT: When we ---

19 THE COURT: Did you bring your rules with you? We may  
20 need to go through our rules.

21 MR. MCKNIGHT: I've got mine.

22 THE COURT: Okay. All right. Take a look at Rule 56  
23 for me while I pull up this statute of limitations case for  
24 you.

25 MR. MCKNIGHT: Thank you.

1       THE COURT: All right. Now take a look at Rule 12 for  
2 me if you would.

3       MR. MCKNIGHT: Any particular sub part; just 12(b) in  
4 general?

5       THE COURT: Six.

6       MR. MCKNIGHT: Just 12(b)(6). Okay.

7       THE COURT: Okay. Tell me why you have not waived your  
8 statute of limitations defense.

9       MR. MCKNIGHT: The court's indulgence.

10      THE COURT: Sure.

11      MR. MCKNIGHT: Your Honor, if I'm reading this  
12 correctly it lists the things that must be stated in the  
13 responsive pleading. I understand that.

14      And considering that fact I see that pursuant to Rule  
15 12(b)(6) it should be included in there. But I don't see  
16 where you -- where it states in the rule that you  
17 specifically waive it by not pleading it.

18      THE COURT: If it is an affirmative defense and you  
19 don't plead it, you waive it. Generally you file a 12(b)(6)  
20 motion in lieu of an answer or with an answer at the same  
21 time.

22      You object to certain parts. You move to dismiss  
23 certain portions of the complaint and you answer certain  
24 portions of the complaint or you move to dismiss the whole  
25 thing.

1           You don't get to wait four months after they have  
2 served request to admit on you and you didn't answer them to  
3 then move to dismiss.

4           MR. MCKNIGHT: Okay.

5           THE COURT: The rules just don't work that way. So I  
6 need to know why you didn't answer their request to admit  
7 and why they should not be deemed admitted per the rule.

8           MR. MCKNIGHT: Court's indulgence just for a second,  
9 Your Honor.

10          THE COURT: Certainly.

11          MR. MCKNIGHT: Your Honor, at this time I really do not  
12 have an answer. Because I had my actual copy of your answer  
13 in my file, and I actually left it so ---

14          THE COURT: What do you need, sir?

15          MR. MCKNIGHT: The -- my answer ---

16          THE COURT: Your answer?

17          MR. MCKNIGHT: --- to their original summons and  
18 complaint.

19          THE COURT: Well, actually that's not what I am asking  
20 you about. What I want to know is why under Rule 36 the  
21 request for admission or the request to admit should not be  
22 deemed admitted as they were properly served I guess four or  
23 five months ago and no response has been given.

24          MR. MCKNIGHT: And beyond that, Your Honor, one of the  
25 other reasons is because we've got two competing pleadings.

1 We have got the original summons and complaint that we  
2 answered, but we also have another -- an amended summons and  
3 complaint with which they filed.

4 THE COURT: Okay. Respectfully, sir, that doesn't have  
5 anything to do with the question I am asking you. All I am  
6 asking -- I am not asking you about the answer. I am not  
7 asking you about the statute of limitations. I am not  
8 asking you about 12(b)(6) or waiving affirmative defenses.

9 I am asking you why you didn't answer their request to  
10 admit and why they should not now be deemed admitted  
11 pursuant to the plain language of Rule 36.

12 MR. MCKNIGHT: For that, Your Honor, we don't have an  
13 answer. I guess you would have to assume that they are  
14 admitted.

15 THE COURT: Okay. The request to admit are admitted.

16 MS. MYERS: Thank you.

17 THE COURT: Okay. What is the next motion? Yes, sir.

18 MS. MYERS: Okay. The next motion is -- the next  
19 motion is Mot. 3, motion to amend the complaint. We are  
20 asking that pro se plaintiff come now and file this motion  
21 for ---

22 (Ms. All entering courtroom and doors slamming)

23 --- reconsideration ---

24 THE COURT: I'm sorry, I couldn't hear because of the  
25 door. I'm sorry.

1 MS. MYERS: I'm sorry. Reconsideration ---

2 THE COURT: I'm sorry, what are you here for?

3 MS. ALL: The same case, Your Honor. I am Shelly All.

4 THE COURT: Oh, I apologize. I thought everybody was  
5 here. We started early, and that is our fault. The parties  
6 indicated that everybody was here.

7 MS. ALL: Well, I am only here on the motion to amend,  
8 because I was dismissed as a party. I am also here on  
9 behalf of Dennis Christensen. We were both dismissed as  
10 parties, but the motion to amend is trying to add us ---

11 THE COURT: I understand. Let's start back over.

12 MS. MYERS: Okay.

13 THE COURT: Mr. McKnight, you are an attorney?

14 MR. MCKNIGHT: Yes, Your Honor, I am ---

15 THE COURT: Okay. Is there anybody else missing  
16 attorney wise? We started early because you represented  
17 that everybody was here ---

18 MR. MCKNIGHT: Right.

19 THE COURT: --- and that y'all were ready to go.

20 MR. MCKNIGHT: And in my belief, Your Honor -- and I  
21 didn't mean to mislead the court. I honestly thought that  
22 everyone was here too. Because I assumed -- Ms. All has  
23 been dismissed.

24 THE COURT: Okay.

25 MR. MCKNIGHT: Mr. Christensen has been dismissed. I

1 would like -- as you can understand this thing is very  
2 convoluted. And they filed motions to be dismissed. And  
3 based upon -- and they were grant -- those motions were  
4 granted.

5 THE COURT: Okay.

6 MR. MCKNIGHT: That is why I assumed that ---

7 THE COURT: Okay.

8 MR. MCKNIGHT: --- it was just the parties.

9 THE COURT: All right. And Ms. All, do you have any  
10 involvement whatsoever -- I just granted a motion to deem  
11 certain request for admission that were served upon Mr.  
12 McKnight granted. They are admitted because he didn't  
13 respond to them. Do you have any dog in that fight  
14 whatsoever? Because we started early, and that is my fault.

15 MS. ALL: No, Your Honor.

16 THE COURT: Okay.

17 MS. ALL: I was not served with any discoveries.

18 THE COURT: So you are set. Okay. So the motion to  
19 amend is as to her client?

20 MS. MYERS: It is her -- yes.

21 THE COURT: Okay. I am happy to hear from you.

22 MS. MYERS: Okay. Thank you. Okay. We are asking for  
23 reconsideration as ---

24 THE COURT: Okay, let me stop you real quick.

25 MS. MYERS: Okay.

1 THE COURT: I am not allowed to reconsider another  
2 judge's order.

3 MS. MYERS: Okay.

4 THE COURT: So did somebody dismiss her client?

5 MS. MYERS: No, what happened ---

6 THE COURT: Yes, sir, or I am happy to hear from  
7 anybody.

8 MR. MCKNIGHT: Judge Young has already ruled on that,  
9 the motion to admit ---

10 MS. MYERS: No, ma'am.

11 MR. MCKNIGHT: The motion to amend if I -- if I  
12 believe -- in my review of the file. And what they have  
13 done is they have filed a motion to reconsider Judge Young's  
14 order denying them the ability to amend their complaint.

15 THE COURT: Well, no, they granted -- he granted their  
16 motion to amend.

17 MR. MCKNIGHT: I'm sorry, what did you say, Your Honor?

18 MS. ALL: Your Honor ---

19 THE COURT: I am happy to hear from you.

20 MS. ALL: Okay.

21 THE COURT: Thank you.

22 MS. ALL: They filed an original motion to amend.

23 We -- we filed a motion to dismiss their complaint.

24 THE COURT: Okay.

25 MS. ALL: Okay. And that was scheduled for a hearing.

1 And at the same time they had filed a motion to amend their  
2 complaint removing both myself and Dennis Christensen as  
3 defendants.

4 THE COURT: Okay.

5 MS. ALL: Judge Young granted their motion to amend the  
6 complaint and dismissed us as defendants because they took  
7 us out of the first amended complaint and then said that our  
8 motion to dismiss at that point was moot.

9 Then they filed a second motion to amend the complaint  
10 now trying to add us back as defendants. And that is what  
11 the motion today -- scheduled today is for.

12 Previously they had filed a motion to reconsider Judge  
13 Young's order, and that has not been heard.

14 THE COURT: Okay. So the only thing remaining is the  
15 motion to reconsider Judge Young's order?

16 MS. MYERS: Yes.

17 THE COURT: Ma'am; I don't have the authority to  
18 reconsider another judge's order. And -- however ---

19 MS. MYERS: Because we felt like that was a mistake  
20 on the moot because we did ask for and we have the  
21 information ---

22 THE COURT: Well ---

23 MS. MYERS: --- of Daquigan -- we have a letter also  
24 stating that Daquigan and also -- Daquigan and Ms. Spencer  
25 was off the case, not -- they made a mistake. We felt like

1 it was a mistake made, so that is why we asked for a  
2 reconsideration.

3 THE COURT: Okay. I do not have the authority to  
4 reconsider another court's order.

5 MS. MYERS: Okay.

6 THE COURT: It appears however that Ms. All's clients  
7 were previously dismissed. Were they dismissed with  
8 prejudice?

9 MS. MYERS: No, it wasn't her client. It was her.

10 THE COURT: Oh, it was her personally?

11 MS. MYERS: Her personally, not her client.

12 MS. ALL: Myself, and I am here on behalf of Dennis  
13 Christensen who is my partner.

14 THE COURT: Gotcha.

15 MS. ALL: No, we were not dismissed with prejudice,  
16 Your Honor. We were dismissed because they had filed a  
17 motion to amend their complaint and removed us as  
18 defendants.

19 THE COURT: And now they want to put you back?

20 MS. ALL: Yes.

21 THE COURT: So you are seeking to amend the complaint  
22 again?

23 MS. MYERS: No, that's not what we are doing.

24 MS. ALL: Yes, Your Honor ---

25 MS. MYERS: We felt like the court made a mistake. And

1 when we asked for Daquigan and Spencer to be removed we sent  
2 a letter to the court stating this. We did not ask for  
3 Christensen and All to be removed. So that is why we wrote  
4 back to the court asking for a reconsideration.

5 THE COURT: Okay.

6 MR. MYERS: We can show you the papers.

7 MS. MYERS: We can show you the papers.

8 THE COURT: I just need to see a copy of the motion  
9 that is before me today. I've got the motion to grant the  
10 admission of the request for admission that we are not  
11 answering. But I need to know what the other motion was.

12 It is styled on my docket as a motion to amend, however  
13 it seems to be more of a motion to reconsider which means  
14 that we are going to have to just bring y'all back in front  
15 of Judge Young or he can decide it on the brief since you  
16 have already had a hearing.

17 MR. MYERS: Right.

18 MS. ALL: That is correct, Your Honor.

19 THE COURT: Is that accurate?

20 MS. ALL: It would be a motion to reconsider.

21 THE COURT: Okay. We will get that before Judge Young.

22 MS. MYERS: Thank you.

23 THE COURT: He may decide to rule on that on the  
24 paperwork ---

25 MR. MYERS: Right.

1 THE COURT: --- since you have already had a hearing.

2 MS. MYERS: Yes.

3 MR. MYERS: Right.

4 THE COURT: So make sure you send any paperwork that he  
5 needs to have specifically stating what the grounds are.  
6 You file anything that you would like to in response. And  
7 he may or may not set it for a hearing. But I will let him  
8 know that that came in front of me and I don't have the  
9 jurisdiction to review it.

10 MS. MYERS: Thank you.

11 THE COURT: Okay. Anything else we can deal with here  
12 today?

13 MS. MYERS: We are asking that we still stay on the  
14 roster for a jury trial.

15 MR. MYERS: Right.

16 THE COURT: Okay, are you on the roster ---

17 MS. MYERS: Yes, we are on the roster.

18 THE COURT: I mean I think Mr. McKnight has got a  
19 motion for summary judgment pending now. Once your  
20 requisite ten days' notice runs -- hasn't quite run yet.  
21 That will be placed on a motions roster.

22 Well, he still gets to have his motion for summary  
23 judgment heard. And he may be entitled to summary judgment.  
24 I don't know. You haven't had time and proper notice under  
25 Rule 56.

1 MS. MYERS: Right.

2 THE COURT: So I don't know what your position is on  
3 the roster, where on the jury trial roster you are.

4 MS. MYERS: Okay.

5 THE COURT: Okay. We will get the summary judgment  
6 motion or motion to dismiss set and go from there.

7 MR. MYERS: Thank you.

8 MS. MYERS: Thank you, ma'am.

9 THE COURT: Okay.

10 MS. ALL: Thank you, Your Honor.

11 THE COURT: Good to see y'all. We will do a Form 4.

12 MR. MCKNIGHT: Do you want them to prepare an order; or  
13 are they going to send a copy to me beforehand ---

14 THE COURT: I don't think you really need an order. I  
15 think I can just put in the Form 4 that I prepare that  
16 pursuant to the rule to Rule 36 the request to admit are  
17 deemed admitted as they weren't answered from five months.

18 MR. MCKNIGHT: Okay.

19 THE COURT: But if y'all want to submit something, that  
20 is fine. That might make things more confusing.

21 MS. MYERS: That would be fine.

22 MR. MCKNIGHT: I think they need to submit something,  
23 Your Honor.

24 MS. MYERS: We are concerned ---

25 THE COURT: What do you want them to submit?

1 MR. MCKNIGHT: Well, the order itself, Your Honor,  
2 because just for clarity we will need it. What they had --  
3 what they had -- I -- my ---

4 THE COURT: What is the order going to say other  
5 than ---

6 MR. MCKNIGHT: That you granted -- that you granted  
7 their motion ---

8 THE COURT: --- defendant did not answer the request to  
9 admit for five months, ---

10 MR. MCKNIGHT: Correct.

11 THE COURT: --- he had no defense for not answering ---

12 MR. MCKNIGHT: Right.

13 THE COURT: --- therefore the motion ---

14 MR. MCKNIGHT: Yes, ma'am.

15 THE COURT: ---- to have the request ---

16 MR. MCKNIGHT: Yes.

17 THE COURT: --- to admit deemed admitted pursuant to  
18 Rule 36 are -- is granted. What else would the order say?

19 MR. MCKNIGHT: That's what it should say.

20 THE COURT: Okay. Or unless you are saying you are  
21 just going to put that in a Form 4?

22 THE COURT: I am going to put that in a Form 4..

23 MR. MCKNIGHT: Okay. That is fine.

24 THE COURT: Okay. But I will be very specific about  
25 it.

1 MR. MCKNIGHT: Thank you.

2 THE COURT: That way y'all will be protected.

3 MR. MCKNIGHT: All right.

4 THE COURT: Okay.

5 MR. MCKNIGHT: Thank you.

6 MS. MYERS: Thank you.

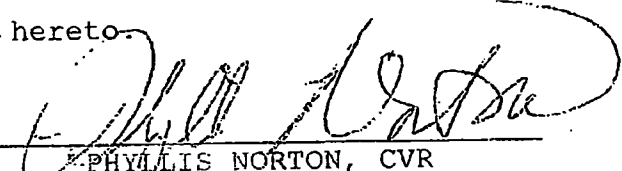
7 (Whereupon the hearing concluded 10:37 a.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

### CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on April 24, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

  
PHYLLIS NORTON, CVR  
(Signature in blue ink.)

Date: November 5, 2012

Certified Transcript Provided For: Mrs  
Certification Reference # 10512-5216

ORIGINAL

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011- CP-10-2026

JEROME MYERS, ET AL  
PLAINTIFF(S)

CEZAR E. MCKNIGHT, ET AL  
DEFENDANT(S)

|               |                                                                                      |
|---------------|--------------------------------------------------------------------------------------|
| Submitted by: | Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
|               | or<br><input type="checkbox"/> Self-Represented Litigant                             |

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(c), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

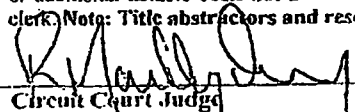
IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment was granted; as a result all other motions are moot; formal order to follow via mail.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
| n/a                                                                                                                                                                                                          | n/a                                      | \$n/a                                                    |
|                                                                                                                                                                                                              |                                          | \$                                                       |
|                                                                                                                                                                                                              |                                          | \$                                                       |
| If applicable, describe the property, including tax map information and address, referenced in the order:                                                                                                    |                                          |                                                          |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2060  
Judge Code

10/22/2012  
Date

SCRPC Form 4C (12/2011)

Page 1

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or  
placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or  
to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

## STATEMENT OF ARGUMENT

The Appellants pray for the Court of Appeals to correct the Stipulation reducing the original Defendants as SCRCP 40j required all the parties to sign for a consent order which it being signed by the only the two Appellant's and Attorney Dennis Christensen—a lawyer—does not meet the prerequisite all of the SCRCP 40j. The other defendant did not sign any stipulation.

To allow or to correct that attorney All and Christensen law firm was retained to seek civil actions about the suspected forgery and fraud when they misrepresented and caused a probate case without any testimony from the Appellants about the forgery and the fraud being caused by the illegal General and Durable Power of Attorney created by the Respondents April 12, 2007 (RMC) date.

To allow the Appellants for a credit of the legal advice apparently shared between Judge Jeffery Young and Respondent Attorney Cezar E. McKnight. The Charleston Count has had plenty of time to have known better about tolling, since the South Carolina Supreme Court Decision in Hooper v. Ebenezer Senior Service and Rehabilitation Center.

As detailed herein question No. 1 to show October 16, 2008 until March 17, 2011 is less than three years time not lost after a time from June 28, 2007 that is solely attributable to their delays and their lack if action by others who are certain Attorney and City Police Department Elder Abuse Unit.

- a. The Appellants have never had the opportunity to tell their story and history via a timeline of events about the suspected and alleged Power of Attorney forgery of their father's signature while my father was a patient at the Veterans Affairs Hospital in April of 2007
- b. The Appellants filed their Summons & Complaint on March 17, 2011 which is less than three years when Equitably Tolerated from the date the Appellant's had retained the Dennis Christensen and Shelly All Law Firm with a payment of June 27-28, 2007.[ Shelly K. All was original defendant & plaintiff-appellant Attorney and Shelly K. All and her firm were never removed by a court order]
- c. The first "loss of time" was one year three months and eighteen days between retaining Dennis Christensen and Shelly K. All law firms; whose misrepresentation and misbehavior have caused their later inclusion into this civil action as defendants?
- d. The ending of "loss of time" continued up to the date on the replacement counsel letter; Oberman & Oberman Law Firm; whose letter has received the Handwriting Experts Affidavit for the Appellants and mailed it out with their letter dated October 16, 2008. This expert's affidavit is the trigger required to attach with the Summons and Complaint against professional and attorneys and the same must comply with SC Code 15-36-100(B), (F), & (G) (2).

- e. The total time of matter, Appellants have met their burden to have been diligently in pursuit of their cause of actions of actions as required by the Hooper citations; and even the time up and including November 7, 2008 when the City Police Dept letter was obtained by these Appellant.

Did the lower court err when it continuously allowed Cezar E. McKnight to be the attorney for his co-defendants and his clients about Probate during all time pertinent to the forged Power Of Attorney fraud act; with estranged wife Willie O.W. McFadden-Myers and Mrs. Myers granddaughter, Latonya Hobson?

- a. Is this repulsive attorney behavior also an 'Ethical Negligence'
- b. This appeal is to show that Respondents Cezar McKnight, abused his duty and intentionally is culpable the causes of attorney's professional negligence in this matter, which continues even to today, until the matter is resolved about the attempts to sale the home and land of Henry Myers heirs? The Real Estate Sales Contract (s) using the forged Power of Attorney document that leveraged the Probate Petitions, all later vacated.

Appellants assert that the Law of the Case is that twice the case was adjudicated as being timely filed by both the Honorable Stephanie P. McDonald and the Honorable W. Jeffery Young; as both on the record declared this civil action by a Scheduling Discovery ORDER and then ready for a Jury Trail; while the issue of three years was not a matter until Defendant-Respondent McKnight continued a repetitive "forum shopping" of Circuit Judges that unfairly tolled the statue of limitations of series of fraud alleged by the forgery and conversion and misrepresentation sections of the complaint.

- a. Judge McDonald April 24, 2012 told and scolded defendant- respondent McKnight for his not answering the Appellants discovery for five months. In fact the court below orders McKnight to include this charge in the proposed order. The order got signed and served without the inclusion. The plaintiffs never got to file it rule to show before Judge Roger Young.
- b. Judge Jeffery Young July 23, 2012 transcript page eight and nine is the Respondent Cezar E. McKnight being told by the court that there would be a trial by jury about the forgery and fraud.
- c. The Appellants claim that if they would have been allowed to speak completely at hearing to the court below other than to partially speak via their Motion to Reconsider and their Second Motion to Reconsider that the Plaintiff-Appellants testimony would have shown that Rule 40j consent to dismiss certain parties other original defendants was SCRCP procedurally flawed in that rule requires ALL the PARTIES to sign the stipulations; which was not perfected, before the court can sign any consent order.
- d. At the hearing July 23, 2012 with Judge Jeffery Young, he held a "of the record conference" with Respondent Cezar E. McKnight then the hearing resumed with

instruction to McKnight about how to proceed with his forthcoming Amended Answer *ibid* a Motion to Dismiss Rule. 15(a). The Court did not give legal device to the Appellants.

OK E 622PG552

STATE OF SOUTH CAROLINA, )  
 ) DURABLE POWER OF ATTORNEY  
 COUNTY OF CHARLESTON )

KNOW ALL MEN BY THESE PRESENTS, that I, HENRY MYERS (251-24-2447),  
 have made, constituted and appointed, and by these presents do make, execute and  
 appoint  
 my wife, WILLIE W. MYERS, my true and lawful attorney in fact, for me and in my name  
 and stead, and for my use. Generally to do and perform any and every act which could be  
 done by me as fully as I might or could do if personally present. The generality of the  
 power herein granted is not limited in any way by the grant of special and particular  
 powers hereinafter expressed, to-wit:

To ask for, demand, sue for, levy, recover and receive all such sum or sums of  
 money, debts, rents, goods, wares, dues, accounts, and other demands and things  
 whatsoever, which are or shall be due, owing or payable to me, or detained from me in any  
 manner whatsoever;

To institute and prosecute or to defend or to settle or to assert any right in my name  
 any action at law, suit in equity, or special proceeding before any court or commission or  
 board, and to do any and all things necessary, convenient or desirable in connection  
 therewith.

To compromise and settle any claim or demand existing against me or in my behalf  
 to carry such compromise into effect.

BKE 622PG553✓

To negotiate, make and execute any contract in my name, for me and in my behalf, and without in any way limiting the general scope of this power, including contracts either to buy, sell, lease, mortgage, repair or operate, any real or personal property.

To borrow money for me and to execute in my name any note or bond or other evidence of indebtedness, and to pledge or mortgage any personal or real property to secure the same and to execute in my name all papers necessary to effectuate such mortgage or pledge.

To execute in my name and deliver any bill of sale or deed of conveyance or other instrument conveying property, real or personal, upon any terms whatsoever.

To enter any lock box rented in my name in any bank (with an officer of the bank in which the same is located) and to withdraw therefrom securities and to sell or exchange the same, and to do all things necessary or convenient in connection therewith.

To sign my name to any check upon any checking account standing in my name in any bank, and by means of such check or checks to withdraw from such account funds now on deposit therein or hereafter deposited, or to empower the payees of such checks to make such withdrawal.

✓ To endorse in my name any check, draft, note or other negotiable instrument.

To make, execute, sign my name to and deliver any and all documents, instruments and writings of any and every kind, nature and description that might be required by law, or that might be necessary, or in the discretion of my said attorney, convenient, desirable or beneficial to me.

BKE 622PG554

the matters hereinabove mentioned, and generally all and every other matter whatsoever necessary to be done in the exercise of the powers herein granted, for me and in my name to do, execute and perform as fully as I might or could do if personally present, or if the matter requires more special authority than is herein given, ratifying and confirming all and whatsoever my said attorney shall lawfully do in and about the premises by virtue hereof.

This Power of Attorney shall not be affected by my physical disability or mental incompetence which would render me incapable of managing my own estate and it is my intent that the authority conferred shall be exercisable notwithstanding my physical disability or mental incompetence. All acts done by my attorney in fact pursuant to the power during any period of disability or mental incompetence shall have the same effect and inure to the benefit and bind me or my heirs, devisees, legatees and personal representatives as if I were mentally competent and not disabled, all in accordance with the provisions of Section 62-5-501, South Carolina Probate Code.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Charleston, South Carolina, this 12 day of April, 2007.

X [Signature]  
HENRY MYERS

SIGNED AND ACKNOWLEDGED  
IN THE PRESENCE OF:

[Signature] (SEAL)  
(WITNESS 1)

[Signature] (SEAL)  
(NOTARY PUBLIC/WITNESS 2)

3212 Oak Spring St.  
[Illegible text]

105

[Signature] 705 W. L. Ave  
K. K. STREE, SC.

OK E 622PG555

Signed, Sealed, Published and Declared by the said

HENRY MYERS, as and for his Power of Attorney,

(PERSON GIVING POWER OF ATTORNEY)

in the presence of us, who, at his request and in his presence, and in the presence of each

other, all present together, have hereunto subscribed our names as witnesses:

Latoria Hobson  
(WITNESS 1 SIGNATURE)

[Signature]  
NOTARY PUBLIC/WITNESS 2 SIGNATURE

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

PERSONALLY appeared before me Latoria Hobson  
(PRINT NAME OF WITNESS 1)

and made oath that he saw the within named HENRY MYERS sign,

seal and as his act and deed deliver the within written Power of

Attorney, and that he/she with Earl E. McKnight witnessed  
(PRINT NAME OF NOTARY PUBLIC/WITNESS 2)

the execution thereof.

Latoria Hobson  
(SIGNATURE OF WITNESS 1)

SWORN to before me this 12<sup>th</sup>  
day of April, 2007.

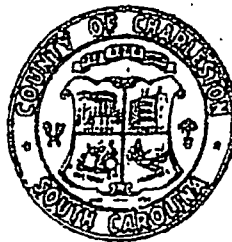
[Signature] (SEAL)  
NOTARY PUBLIC

My Commission Expires: 9/24/2011

8KE 622PG556

**RECORDER'S PAGE**

**NOTE:** This page **MUST** remain  
with the original document



Filed By:

WILLIE W. MYERS  
PO BOX 12124  
CHARLESTON SC 29412

Number of Pages:

5

**FILED**

April 13, 2007

12:43:43 PM

8KE

622PG552

Charlie Lybrand, Register  
Charleston County, SC

| DESCRIPTION  | AMOUNT         |
|--------------|----------------|
| P/ATTY \$    | 15.0           |
|              |                |
|              |                |
| Postage \$   | 0.5            |
| <b>TOTAL</b> | <b>\$ 15.5</b> |

DRAWER:

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
JEROME MYERS & GLORIA )  
MYERS, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
CEZAR E. MCKNIGHT, )  
WILLIE O.W. MCFADDEN- )  
MYERS, & LATONYA HOBSON, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
CASE NO.: 2011-CP-10-2026

ORDER GRANTING DEFENDANT'S  
MOTION TO AMEND THEIR  
ANSWER AND DENYING  
PLAINTIFF'S & DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGEMENT

FILED  
2012 JUL 26 AM 9:25  
BY JULIE J. ARMSTRONG  
CLERK OF COURT

This matter came before the Court for a hearing on July 23, 2012, for consideration of a number of motions including: 1) Plaintiff's Motion for Summary Judgment, 2) Defendant's Motion for Summary Judgment and Defendant's Motion to Amend Pleading. Pro se Plaintiffs and counsel for the Defendants were present and this Court entertained and considered oral arguments.

#### FACTS

Pro se, sibling Plaintiffs bring this action alleging misrepresentation, fraud, and forgery regarding a power of attorney for their father. Defendants have filed a Motion to Amend Pleadings pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure (SCRCP) and a Motion for Summary Judgment

P 1

Pursuant to Rule 56(e) of the SCRCP. The Plaintiff's have filed a Motion for Summary Judgment Rule (56(e)).

**DEFENDANT'S MOTION TO AMEND PLEADING**

Leave to amend pleadings "shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a) S.C.R.Civ.P. This Court finds that the amendment adds to the Defendants' Answer the affirmative defense that the statute of limitations in this matter has run. This Court further finds that granting the Defendants leave to amend the Answer is in the interest of justice and will not prejudice the Plaintiffs. Therefore, for the aforementioned reasons, Defendants' Motion to Amend Pleading is granted.

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants withdrew their Motion for Summary Judgment and as a result the Defendants' Motion for Summary Judgment is dismissed without prejudice.

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Summary judgment is only appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of fact. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 627, 541 S.E.2d 831, 833 (2001). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom must viewed in the light most favorable to the nonmoving party. Id.

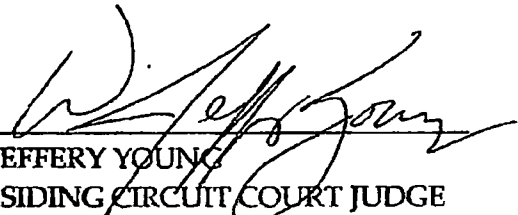


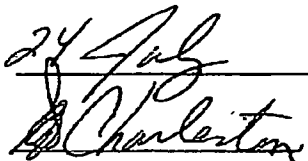
After review, this Court finds that genuine issues of fact exists and Plaintiffs are not entitled to judgment as a matter of law and therefore summary judgment is not appropriate at this time. The Plaintiffs' Motion for Summary Judgment is denied for this reason.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Defendants' Motion to Amend Pleading is GRANTED.
2. Defendants' Motion for Summary Judgment is DENIED.
3. Plaintiffs' Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED!

  
W. JEFFERY YOUNG  
PRESIDING CIRCUIT COURT JUDGE  
COURT OF COMMON PLEAS

  
24 July, 2012  
J. Charleston South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

JEROME MYERS AND GLORIA )  
MYERS AS PERSONALLY AND IN HER )  
CAPACITY AS POWER OF ATTORNEY )  
FOR HENRY MYERS )

VS. )

CEZAR E. MCKNIGHT, WILLIE O.W. )

MCFADDEN MYERS AND LATONYA )

HOBSON )

IN THE COURT OF COMMON PLEAS NINTH  
JUDICIAL CIRCUIT

CASE NO: 2011-CP-10-2026

MOTION FOR TO DEEM REQUESTS FOR  
ADMISSION ADMITTED AND TO COMPEL  
ANSWERS TO DISCOVERY REQUESTS

FILED  
2012 JAN 20 PM 3:00  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**MOTION TO DEEM REQUEST FOR ADMISSION ADMITTED AND TO  
COMPEL DISCOVERY**

On September 30, 2011 plaintiffs sent defendant McKnight a letter asking that he file his Answer and that he voluntarily withdraw from the case due to a conflict of interest. Four months later, plaintiffs have not received a response to their letter or the interrogatories or the request for admissions. See Exhibits A-E. Efforts to reach defendant McKnight by telephone to respond to the discovery requests have been unsuccessful because defendant McKnight hasn't bothered to return plaintiffs' calls.

On December 1, 2011 defendant Cezar E. McKnight was properly served by Certified Mail with the attached Requests for Admissions and plaintiff's First Interrogatories and Requests for Production. Defendant McKnight has repeatedly failed to respond to discovery requests since the commencement of this litigation, which had been nearly one year on the date of the hearing on the motion. He has failed to respond

to interrogatories and requests to produce and request for admissions or appear at the various hearings in the case. These omissions occurred despite the weight of the allegations and discovery

The court should deem the requests to admit admitted in the face of proper service and defendant's failure to comply with court rules. South Carolina Rule of Civil Procedure 5(b)(1) provides that "service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court." Service by mail is therefore complete upon mailing of all pleadings following service of the original summons and complaint. Rule 5(b)(1), SCRCPP.

Here, the Record indicates that plaintiffs met the burden of showing that notice was actually mailed by presenting a valid certificate of service dated December 1, 2011. Therefore, the record supports the court's acceptance of plaintiff's certification that the request for admissions had been mailed.

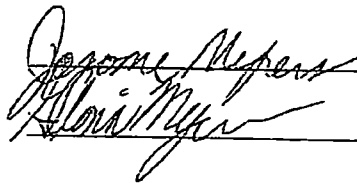
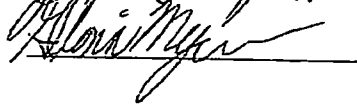
Further, under Rule 36(a) of the South Carolina Rules of Civil Procedure, "all matters contained in a request for admissions are admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party serves answers or objects to the matter." Hinson-Barr, Inc. v. Pinckard, 292 S.C. 267, 269-70, 356 S.E.2d 115, 116 (1987). "Failure to respond to a request for admissions deems the request admitted." Rule 36(a), SCRCPP; Hatchell v. Jackson, 290 S.C. 256, 258, 349

Under Rule 36(b) of the South Carolina Rules of Civil Procedure, any matter admitted under Rule 36(a) is "conclusively established unless the court on motion permits withdrawal or amendment of the admission." Scott v. Greenville Housing Auth., 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003).

### CONCLUSION

For the foregoing reasons, the court should properly deem the request for admissions admitted on the grounds of McKnight's failure to respond to the request under Rule 36 of the South Carolina Rules of Civil Procedure. Furthermore, defendant McKnight should be directed to answer plaintiffs' interrogatories and requests for production within 10 days of the signing of this order.

DATED at Charleston, South Carolina this 9th day of December 2011.

  
\_\_\_\_\_  
  
\_\_\_\_\_

2321 Taylor Street  
Charleston, SC 29406  
843-614-2766  
843-637-7394

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | NINTH JUDICIAL CIRCUIT       |
| COUNTY OF CHARLESTON     | ) | CASE NO.: 2011-CP-10-2026    |
|                          | ) |                              |
| JEROME MYERS & GLORIA    | ) |                              |
| MYERS,                   | ) |                              |
|                          | ) |                              |
| Plaintiffs,              | ) |                              |
|                          | ) |                              |
| v.                       | ) | ORDER OF DISMISSAL WITH      |
|                          | ) | PREJUDICE                    |
| CEZAR E. MCKNIGHT,       | ) |                              |
| WILLIE O.W. MCFADDEN-    | ) |                              |
| MYERS, & LATONYA HOBSON, | ) |                              |
|                          | ) |                              |
| Defendants.              | ) |                              |
|                          | ) |                              |

This matter came before the Court for a hearing on October 22, 2012, for consideration of Defendants' Motion for Summary Judgment. Pro se Plaintiffs and counsel for the Defendants were present and this Court entertained and considered oral arguments.

#### FACTS

Pro se, sibling Plaintiffs bring this action alleging misrepresentation, fraud, and forgery regarding a power of attorney for their father. Defendants have filed a Motion for Summary Judgment alleging that this matter must be dismissed due to the fact that the statute of limitations for the Plaintiff's causes of actions had run.

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

An action alleging fraud must be brought within three years of the Plaintiffs discovering or should have discovered the existence of the causes of action. §15-3-530 South Carolina Code of Laws Annotated. The Plaintiffs admit that they discovered the facts that gave rise to their causes of action sometime in 2007. However the Plaintiffs did not file their Complaint commencing this action until March 17, 2011, well more than three years after they discovered or should have discovered them. These facts make it clear that the statute of limitations for the causes of action at issue here has run and the Plaintiffs' case must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Defendants' Motion for Summary Judgment is granted;
2. The case of Jerome Myers & Gloria Myers v. Cezar E. McKnight, Willie O.W. McFadden Myers and Latonya Hobson Case No.: 2011-CP10-2026 is DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED!

  
R. MARKLEY DENNIS, JR.  
PRESIDING CIRCUIT COURT JUDGE  
COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

November 6, 2012

Moncks Corner, South Carolina

*RMJ / 2*

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON )

CASE NO.: 2011-CP10-2026

Jerome Myers & Gloria Myers, )

PLAINTIFFS )

v. )

CERTIFICATE OF SERVICE

CEZAR E. MCKNIGHT, )

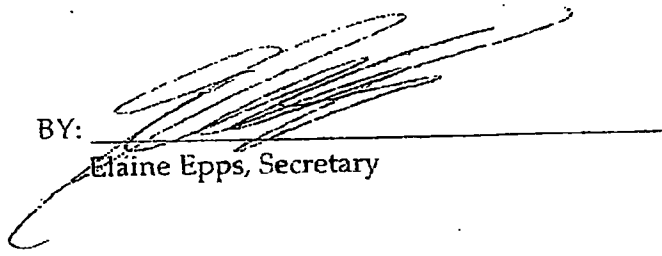
WILLIE O.W. MCFADDEN- )

MYERS, & LATONYA HOBSON, )

DEFENDANTS. )

The undersigned hereby certifies that a true copy of the Order of Dismissal,  
along with Certificate of Service has been served upon the Plaintiffs by mailing a  
copy properly addressed with sufficient postage affixed thereto this 28<sup>th</sup> day  
of November, 2012 to the address below:

Jerome Myers and Gloria Myers  
2321 Taylor Street  
Charleston, SC 29406

BY: 

Elaine Epps, Secretary

**JULIE J. ARMSTRONG**

CLERK OF COURT, C.P. & G.S.  
100 BROAD STREET, SUITE 106  
CHARLESTON, SC 29401-2258

**RETURN SERVICE REQUESTED**



[www3.charlestoncounty.org](http://www3.charlestoncounty.org)

55



**JEROME MYERS**  
2321 TAYLOR ST  
NORTH CHARLESTON SC 29406-6232

**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order/Dismissal with prej**

**CASE NO: 2011CP1002026**

**Jerome Myers , plaintiff, et al VS Cezar E McKnight , defendant, et al**

This judgment was entered on the 03th day of December, 2012, and a copy mailed first class on Tuesday, December 04, 2012; to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at [www3.charlestoncounty.org](http://www3.charlestoncounty.org).

IN THE STATE OF SOUTH CAROLINA )  
PLEAS

COUNTY OF CHARLESTON )

Jerome Myers and Gloria Myers )

Plaintiffs, )

vs )

Shelly K. All; Cezar E. McKnight; )

Ms. Willie O.W. McFadden-Myers: )

and Latonya Hobson. )

Defendants. )

IN THE COURT OF COMMON

NINTH JUDICIAL CIRCUIT

Case No.: 2011-CP-10-2026

CERTIFICATE OF SERVICE for:

NOTICE OF MOTION &

MOTION TO RECONSIDER

Judge's Dennis' ORDER & JUDGMENT

#### CERTIFICATE OF SERVICE

I, Jerome Myers, affirm that on this day I have placed a copy of this NOTICE OF MOTION & MOTION TO RECONSIDER Judge's Dennis' ORDER & JUDGMENT in the USPS mail with first class postage affixed to the following Defendants:

1. Shelly K. All, 260 W. Coleman Blvd., Ste D, Mt. Pleasant, SC 29464
2. Cezar E. McKnight, 106 East Main Street, Lake City, SC 29560
3. Ms. Willie O.W. McFadden-Myers, 301 Lexington Ave., Kingstree, SC 29526
4. Latonya Hobson, 3213 Oak Spring Street, Columbus, OH 43219

December 10, 2012

BY:

Gloria Myers

Jerome Myers

2321 Taylor Street, North Charleston, SC 29406-6232

(843) 747-6741

**FILED**  
DEC 11 2012  
JULIE J. ARMSTRONG  
CLERK, C.P. & G.S.

IN THE STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

Jerome Myers and Gloria Myers )

Plaintiffs, )

vs )

Shelly K. All; Cezar E. McKnight; )

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Defendants. )

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2011-CP-10-2026

NOTICE OF MOTION AND MOTION

FOR RECONSIDERATION AND RELIEF

FROM ERROR IN THE COURT'S ORDER

& CORRECT AUGUST 7, 3007 TO 2008 TIMES

FILED  
2012 DEC 11 PM 1:35  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

TO: THE HONORABLE JUDGE R. Markley Dennis; AND PRO SE DEFENDANTS  
APPEARING INDIVIDUALLY AS Shelly K. All; Cezar E. McKnight; Ms. Willie O.W.  
McFadden-Myers; and Latonya Hobson.

The Plaintiffs assert that there has been a gross mutual miscalculation of the 3 years statute of  
limitations for the following undisputable facts:

The Court issued the attached ORDER on November 6, 2012 ( and the Clerk entered the  
attached Notice of the JUDGEMENT on December 3, 2012 (Mailed December 4, 2012)

2. At the ORDER on [IT's] page #2 at lines 3,4, and 5; it states the year 2007. The error  
was repeated twice in the Plaintiffs Rule 60(b) Second Motion dtd as FILED October 30,  
2012.

3. This was a Plaintiffs typographical error noted in the text of their the Second Motion  
R.60(b) for which with this correction request changing the two typo from August 7,  
2007 to read "August 7, 2008".

a. The forgery was before the the Probate of Daddy Myers, the forger was known by  
the certainty of the §15-36-100 affidavit of Mr. Gidion after August 7, 2008.

4. This was the correct date that any layman, lawyer or judge or Court knew with certainty  
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could the Plaintiff's [or any other laypersons or judiciary] would have had this strict poof

before the absolute proof of the Expert Affidavit via SC Code § 15-36-100. This began the limitations clock to have filed and served a Rules compliant civil action.

5. The Plaintiff's October 30, 2012 **Second Motion R.60(b)** is restated herewith with the correction changing the dated possibly referred to by the ORDER as "*sometime in 2007*". A place in time likely taken from August 7, 2007 rather than the correct date **August 7, 2008; and as explained below:**

- From and including: **Friday, August 8, 2008** *Expert Affidavit signed by Gidion*  
To and including: **Thursday, March 17, 2011** *date civil action FILED.*
- It is 952 days from the start date to the end date, end date included:
  - **Or 2 years, 7 months, 10 days including the end date**

Clearly, the **SC Code Annotated at §15-36-100** requires the affidavit to attach to the civil suit and only with Mr. Gidion's Expert Affidavit [Enclosure (3)] dated as shown August 7, 2008 until the civil action was FILED on March 17, 2011 is really four month within the required 3 years Statute of Limitation requirement.

With the assertion of 'knew or should of known' -- which was only the 'suspected' forgery -- and "suspect" is not defined by the ORDER's use of the SC Statute of Limitations and this is why the State Legislature forced the "know without a doubt about that which can be alleged in the Complaint". Here and only here is where the Plaintiffs can only be adjudicated by "**what and when**" they "**knew with certainty**" via **SC Code Annotated at §15-36-100**; and that time clock began on **August 7, 2008** when Mr. Gidion sent his documents to the then Plaintiff's law firm of Oberman & Oberman. To have filed their civil action prior to August 7, 2008; the Plaintiff's would have been with certainly subjected to a dismissal for a lack of the required expert's affidavit. This Complaint was correctly and timely FILED on March 17, 2011.

The language wrongfully drafted into and copied into the Court's; the ORDER says '*sometimes in 2007*' likely referred to the **start** of the Daddy Myers Probate matter; while the true start date of this Court of Common Pleas civil action was proper with '**only with any certainty, August 7, 2008.**'

This proper time calculation equates to 2 years 7 months 10days inclusive vice the references in the ORDER (prepared by defendant attorney Mr. Cesar McKnight) [It] states that the three years '*has run*'

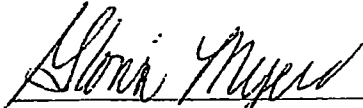
when IN FACT the Plaintiff's were within the three years by more than 4 months and 20 days  
and as such are most timely.

The ORDER and the JUDGEMENT should be VACATED and the Complaint must be re-  
instated and set for the trial w jury demand.

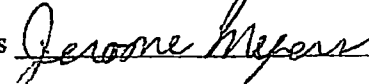
Respectfully submitted this 10th day of December 2012.

BY:

Gloria Myers



Jerome Myers



2321 Taylor Street, North Charleston, SC 29406-6232

(843) 747-6741

Enclosure (3)

(1) ORDER dtd November 6, 2012

(2) JUDGEMENT NOTICE dtd December 3, 2012

(3) EXPERT AFFIDAVIT OF GIDION dtd August 8, 2008.

IN THE STATE OF SOUTH CAROLINA )  
PLEAS

COUNTY OF CHARLESTON )

Jerome Myers and Gloria Myers )

Plaintiffs, )

vs )

Shelly K. All; Cezar E. McKnight; )

Ms. Willie O.W. McFadden-Myers: )

and Latonya Hobson. )

Defendants. )

IN THE COURT OF COMMON

NINTH JUDICIAL CIRCUIT

Case No.: 2011-CP-10-2026

CERTIFICATE OF SERVICE for:

NOTICE OF MOTION &

MOTION TO RECONSIDER

Judge's Dennis' ORDER & JUDGMENT

#### CERTIFICATE OF SERVICE

I, Jerome Myers, affirm that on this day I have placed a copy of this NOTICE OF MOTION & MOTION TO RECONSIDER Judge's Dennis' ORDER & JUDGMENT in the USPS mail with first class postage affixed to the following Defendants:

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3. Ms. Willie O.W. McFadden-Myers, 301 Lexington Ave., Kingstree, SC 29556
4. Latonya Hobson, 3213 Oak Spring Street, Columbus, OH 43219

December 10, 2012

BY:

Gloria Myers

Jerome Myers

2321 Taylor Street, North Charleston, SC 29406-6232

(843) 747-6741

|                                |   |                                    |
|--------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA        | ) | IN THE COURT OF COMMON PLEAS NINTH |
|                                | ) | JUDICIAL CIRCUIT                   |
| COUNTY OF CHARLESTON           | ) |                                    |
|                                | ) | CASE NO: 2011-CP-10-2026           |
|                                | ) |                                    |
| JEROME MYERS AND GLORIA        | ) | FIRST AMENDED COMPLAINT            |
| MYERS AS PERSONALLY AND IN HER | ) | JURY TRIAL DEMANDED                |
| CAPACITY AS POWER OF ATTORNEY  | ) |                                    |
| FOR HENRY MYERS                | ) |                                    |
| VS.                            | ) |                                    |
| CEZAR E. MCKNIGHT, WILLIE O.W. | ) |                                    |
| MCFADDEN MYERS AND LATONYA     | ) |                                    |
| HOBSON                         | ) |                                    |
| _____                          | ) |                                    |

# **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

## **THE PARTIES and VENUE**

1. Plaintiff Gloria Myers is of legal age and is a resident of Charleston County.
2. Plaintiff Jerome Myers is of legal age and is a resident of Charleston County.
3. Defendant Cezar E. McKnight is an attorney, licensed to practice law within the State of South Carolina. Mr. McKnight is also licensed as a notary public and was appointed by the Governor to serve a ten year term. At all relevant times, Defendant McKnight had a place of business at 106 East Main Street, Lake City, South Carolina 29560
4. Defendant Willie O.W. McFadden Myers (McFadden) married Henry Myers approximately 20 years ago.

5. Latonya Hobson is the adult granddaughter of Willie O.W. McFadden and resides in Columbus, Ohio.

#### **GENERAL ALLEGATIONS**

4. On April 12, 2007 Defendants McKnight, McFadden and Hobson participated in a scheme to create the fraudulent durable power of attorney (POA) of Henry Myers. The fraudulent POA purportedly vested power in the name of Defendant McFadden, who forged the signature of Henry Myers; the forged signature was notarized by Defendant McKnight and witnessed by Defendant Hobson. Shortly thereafter, Defendant McFadden moved out of the residence which she shared with Henry Myers and neither Mr. Myers nor Ms. McFadden has lived together as husband and wife.

5. Defendants used the POA to seize checks, cash and other property belonging to Henry Myers without his permission or knowledge. Defendant McFadden used the fraudulent POA to force Henry Myers's veteran benefit checks, Social Security checks and savings accounts to be used for her personal benefit. Parts of these holdings were used to pay Defendant McKnight for legal services and other funds went to and continue to go to Defendant Hobson. Evidence also reveals that the Defendants attempted to use the fraudulent POA to sell Henry Myers real estate holdings, including his personal residence

#### **FIRST CAUSE OF ACTION---MISREPRESENTATION AND FRAUD**

Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned each of the defendants sued herein was the agent of the other defendants and were at all times acting within the purpose and scope of such relationship.

When the defendants prepared the POA, notarized and witnessed it they intended to use the POA to falsely represent to third parties that Defendant had durable power of attorney rights. They knew these representations were false, and were made by defendants with the intent to defraud and deceive Henry Myers and with the intent to induce others to act in the manner herein alleged.

#### **SECOND CAUSE OF ACTION---FORGERY**

Plaintiffs, at the time these representations were made by defendants and at the time defendants took the actions herein alleged, were ignorant of the forgery or the falsity of defendants' representations and believed them to be honest persons who had their father's best interest in mind. Henry Myers, at the time Defendants took the actions herein alleged, was ignorant of Defendants' secret intention to create an unauthorized POA and use it to defraud him. As a proximate result of Defendants' fraud and deceit and the facts herein alleged, Henry Myers and the plaintiffs have been damaged in a sum to be proven at trial.

#### **THIRD CAUSE OF ACTION---VIOLATIONS OF FIDUCIARY DUTIES AND DUTIES PROSCRIBED BY STATE LAW**

Defendant McKnight is an attorney and notary public. By virtue of his role as attorney and notary, he is deemed to be a fiduciary, which means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument. In this case, Mr. McKnight violated his duties as a licensed attorney and notary as described herein

#### **PRAYER**

Plaintiffs pray for judgment against defendants, jointly and severally, and against their marital communities as follows:

1. For injunctive and declaratory relief restraining the Defendants from further use of the POA;
2. for judgment in such amount as shall be proven at the time of trial;
3. for prejudgment interest at the statutory rate on all items of special damages;
4. for punitive damages as allowed by law;
5. for an award of attorney's fees as allowed by law;
6. For an award of costs and disbursements incurred herein; and
7. For such other and further relief as the Court deems just and equitable.

**PLAINTIFFS DEMAND A JURY TRIAL**

DATED at Charleston, South Carolina this \_\_\_\_\_ day of August 2011.

*George Meyer*  
*Blonia Meyer*

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

JEROME MYERS AND GLORIA )

MYERS AS PERSONALLY AND IN HER )

CAPACITY AS POWER OF ATTORNEY )

FOR HENRY MYERS )

VS. )

CEZAR E. MCKNIGHT, WILLIE O.W. )

MCFADDEN MYERS AND LATONYA )

HOBSON DENNIS CHRISTENSEN )

SHELLY ALL )

IN THE COURT OF COMMON PLEAS NINTH  
JUDICIAL CIRCUIT

CASE NO: 2011-CP-10-2026

SECOND AMENDED COMPLAINT  
JURY TRIAL DEMANDED

FILED  
2011 SEP 23 AM 11:19  
JULIE J. ARMSTRONG  
CLERK OF COURT

## SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

### THE PARTIES and VENUE

1. Plaintiff Gloria Myers is of legal age and is a resident of Charleston County; she has been authorized to proceed in this matter by a duly granted General Durable Power of Attorney executed by and for her father, Henry Myers.
2. Plaintiff Jerome Myers is of legal age and is a resident of Charleston County.
3. Defendant Cezar E. McKnight is an attorney, licensed to practice law within the State of South Carolina. Mr. McKnight is also licensed as a notary public and was appointed by the Governor to serve a ten year term. At all relevant times, Defendant McKnight had a place of business at 106 East Main Street, Lake City, South Carolina 29560;

4. Defendants Law Office of Dennis J. Christensen, P.A. and attorneys Dennis Christensen and Shelly All are attorneys, licensed to practice law within the State of South Carolina. At all relevant time, Defendants place of business was 260 West Coleman BLVD Mt, Pleasant, SC 29464;

5. Defendant Willie O.W. McFadden Myers (McFadden) married Henry Myers approximately 20 years ago.

6. Latonya Hobson is the adult granddaughter of Willie O.W. McFadden and resides in Columbus, Ohio.

#### **GENERAL ALLEGATIONS**

6. On April 12, 2007 Defendants McKnight, McFadden and Hobson participated in a scheme to create the fraudulent durable power of attorney (POA) of Henry Myers. The fraudulent POA purportedly vested power in the name of Defendant McFadden, who forged the signature of Henry Myers; the forged signature was notarized by Defendant McKnight and witnessed by Defendant Hobson. Shortly thereafter, Defendant McFadden moved out of the residence which she shared with Henry Myers and neither Mr. Myers nor Ms. McFadden has lived together as husband and wife.

5. Defendants used the POA to seize checks, cash and other property belonging to Henry Myers without his permission or knowledge. Defendant McFadden used the fraudulent POA to force Henry Myers's veteran benefit checks, Social Security checks and savings accounts to be used for her personal benefit. Parts of these holdings were used to pay Defendant McKnight for legal services and other funds went to and continue to go to Defendant Hobson. Evidence also reveals that the Defendants

attempted to use the fraudulent POA to sell Henry Myers real estate holdings, including his personal residence.

6. On May 6, 2007, Plaintiff Gloria Myers entered into a contract with the Law Office of Dennis J. Christensen, P.A. and attorneys Dennis Christensen and Shelly All to provide legal representation services. Specifically, Defendants Christensen and All were hired to provide legal services for Henry Myers. In spite of being paid and shown detailed documentation and witness statements concerning a scheme to steal the assets of Henry Myers, through the fraudulent actions of the co-Defendants named in this complaint, Defendants Christensen and All breached their duty to provide services by allowing co-Defendants to wrongfully take Henry Myers and place him in a nursing home in Florence, South Carolina, nearly 120 miles away from his home. Defendants also allowed co-Defendants to execute a scheme to defraud Henry Myers of his real estate, bank savings, pension and Social Security checks and other assets through the use of a forged Power of Attorney in violation of law. Defendants Christensen and All refused to file objections or otherwise pursue legal causes of actions in violation of instructions given them by plaintiff in breach of their duties as attorneys licensed to practice law.

**First Cause of Action---Legal Malpractice and Breach of Contract**

7. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned Defendants Christensen and All were the agent of the other and were at all times acting within the purpose and scope of the attorney/client relationship.

8. Defendants Christensen and All were required to provide legal advice and care they violated their fiduciary duty as attorneys by violating their legal obligations under the oral contract and state law.

9. That Defendants under the applicable standard of care owed a duty to the Plaintiff. The Defendants breached this duty and standard of care by failing to properly follow instructions and provide legal representation services as directed and otherwise follow the laws of the state of South Carolina.

10. That as a direct and proximate result of the breach of the applicable standard of care by Defendants, Plaintiffs: 1) suffered emotional pain and suffering in the past and will suffer such pain and suffering into the future, 2) incurred expenses in the past and will incur future expenses, 3) suffered loss of money, including interest on an unauthorized loan, 4) suffered permanent losses (enlargement of debt) and damages caused by the direct and proximate result of the negligent actions and breaches of the applicable standards of fiduciary care by all of the Defendants without any act or omission on the part of the Plaintiffs directly thereunto contributing; that the Plaintiffs and did not assume the risk of said losses.

#### **SECOND CAUSE OF ACTION—MISREPRESENTATION AND FRAUD**

11. Plaintiffs are informed and believe and thereon allege that, at all times herein mentioned each of the Defendants sued herein was the agent of the other Defendants and were at all times acting within the purpose and scope of such relationship.

12. When the Defendants prepared the POA, notarized and witnessed it they intended to use the POA to falsely represent to third parties that Defendant had durable

power of attorney rights. They knew these representations were false, and were made by Defendants with the intent to defraud and deceive Henry Myers and with the intent to induce others to act in the manner herein alleged.

### **THIRD CAUSE OF ACTION—FORGERY**

13. Plaintiffs, at the time these representations were made by Defendants and at the time Defendants took the actions herein alleged, were ignorant of the forgery or the falsity of Defendants' representations and believed them to be honest persons who had their father's best interest in mind. Henry Myers, at the time Defendants took the actions herein alleged, was ignorant of Defendants' secret intention to create an unauthorized POA and use it to defraud him. As a proximate result of Defendants' fraud and deceit and the facts herein alleged, Henry Myers and the Plaintiffs have been damaged in a sum to be proven at trial.

### **FOURTH CAUSE OF ACTION—VIOLATIONS OF FIDUCIARY DUTIES AND DUTIES PROSCRIBED BY STATE LAW**

14. Defendant McKnight is an attorney and notary public. By virtue of his role as attorney and notary, he is deemed to be a fiduciary, which means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument. In this case, Mr. McKnight violated his duties as a licensed attorney and notary as described herein

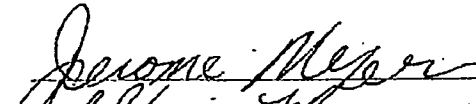
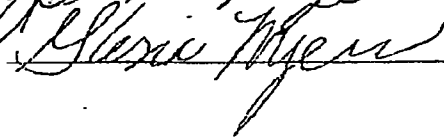
### **PRAYER**

Plaintiffs pray for judgment against Defendants, jointly and severally, and against their marital communities as follows:

1. For injunctive and declaratory relief restraining the Defendants from further use of the POA;
2. For judgment in such amount as shall be proven at the time of trial;
3. for prejudgment interest at the statutory rate on all items of special damages;
4. for punitive damages as allowed by law;
5. for an award of attorney's fees as allowed by law;
6. For an award of costs and disbursements incurred herein; and
7. For such other and further relief as the Court deems just and equitable.

**PLAINTIFFS DEMAND A JURY TRIAL**

DATED at Charleston, South Carolina this 22 day of September 2011.

September 23, 2011

⑪ 2026

Ms. Julie J. Armstrong  
Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401

Re: Myers v. Cezar E. McKnight.  
CASE NOS: 2011CP1002026

Dear Clerk of the Court:

Please find enclosed for filing plaintiff's Motion for Second Amended Complaint

Yours truly,

*Stephanie Meyer*  
*Gloria Meyer*

IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Jerome Myers and Gloria Myers )

Plaintiffs, )

vs )

Shelly K. All; Cezar E. McKnight; )

Ms. Willie O.W. McFadden-Myers: )

and Latonya Hobson. )

Defendants. )

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2011-CP-10-2026

*Luigi*

NOTICE OF MOTION AND MOTION

FOR RECONSIDERATION AND RELIEF

FROM ERROR IN THE COURT'S ORDER

FILED  
2011 NOV -7 PM 3:05  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO: THE HONORABLE JUDGE ROGER YOUNG; AND PRO SE DEFENDANTS APPEARING INDIVIDUALLY AS Shelly K. All; Cezar E. McKnight; Ms. Willie O.W. McFadden-Myers; and Latonya Hobson.

Please take NOTICE that the Plaintiffs above captioned move pursuant to Rules 59 and 6 of the SC Rules of Civil Procedure hereby moves for this honorable court to reconsider the order as detailed below; and to relieve the Plaintiffs from certain grammatical factual errors needing clarifications. The ORDER FILED OCT 26 2011 was downloaded online by the Plaintiffs as the Court Clerk only mailed the Plaintiffs a letter claiming as being certified for being mailed the ORDER to the Plaintiffs on OCT 29 2011 as served and received on NOV 2 2011.

1. The Plaintiffs OBJECT to having arrived at the scheduled hearing date and time only to see the the Attorneys, as Defendants, were behind the closed doors with the Court; and
2. The Plaintiffs OBJECT to the language of the last sentence of the first ORDERs paragraph where it states "Pro se Plaintiffs and counsel for the Defendants [ SIC Shelly K. All & Cezar E. McKnight ] were present, and this Court entertained and considered oral arguments." It must be changed to include "the Plaintiffs as having been excluded from the contents and conversations held the closed doors meeting that the Plaintiffs were not privy to."; and
3. The Facts of the case refer to the Plaintiffs Father as being "their incompetent father." The record must show that the father is not deemed incompetent by the US Department of Veterans Affairs. He lives in his own home and is active with his life, his family and his church in the City of Charleston.

AND IT IS SO MOVED: TO SET THE RECORD AS CORRECTED.

11-2026

Based upon the above Plaintiffs Jerome Myers and Gloria Myers respectfully request that the Defendants complaints be motion for reconsideration and relief from error in the courts order and for such other and further relief as deemed just and proper.

Respectfully Submitted

*Jerome Myers and Gloria Myers*  
*Jerome Myers & Gloria Myers*  
Jerome Myers and Gloria Myers

2321 Taylor Street  
North Charleston, SC 29406  
843-614-2766

IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
Jerome Myers and Gloria Myers )  
Plaintiffs, )

vs )

Shelly K. All; Cezar E. McKnight; )  
Ms. Willie O.W. McFadden-Myers: )  
and Latonya Hobson. )  
Defendants. )

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No.: 2011-CP-10-2026

*Second*  
NOTICE OF MOTION AND MOTION  
FOR RECONSIDERATION AND RELIEF  
FROM ERROR IN THE COURT'S ORDER  
& CORRECT AUGUST 7, 3007 TO 2008 TIMES

FILED  
2012 DEC 11 PM 1:34  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO: THE HONORABLE JUDGE R. Markley Dennis; AND PRO SE DEFENDANTS  
APPEARING INDIVIDUALLY AS Shelly K. All; Cezar E. McKnight; Ms. Willie O.W.  
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The Plaintiffs assert that there has been a gross mutual miscalculation of the 3 years statute of  
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of the forgery of the Power of Attorney signatures of Daddy Myers. Certainly not before  
could the Plaintiffs [or any other laypersons or judiciary] would have had this strict poof

before the absolute proof of the Expert Affidavit via SC Code § 15-36-100. This began the limitations clock to have filed and served a Rules compliant civil action.

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To and including: **Thursday, March 17, 2011 date civil action FILED.**
- It is 952 days from the start date to the end date, end date included:
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Clearly, the **SC Code Annotated at §15-36-100** requires the affidavit to attach to the civil suit and only with Mr. Gidion's Expert Affidavit [Enclosure (3)] dated as shown August 7, 2008 until the civil action was **FILED** on March 17, 2011 is really four month within the required 3 years Statute of Limitation requirement.

With the assertion of 'knew or should of known' -- which was only the 'suspected' forgery -- and "suspect" is not defined by the ORDER's use of the SC Statute of Limitations and this is why the State Legislature forced the "know without a doubt about that which can be alleged in the Complaint". Here and only here is where the Plaintiffs can only be adjudicated by "**what and when**" they "**knew with certainty**" via **SC Code Annotated at §15-36-100;** and that time clock began on **August 7, 2008 when Mr. Gidion sent his documents** to the then Plaintiff's law firm of Oberman & Oberman. To have filed their civil action prior to August 7, 2008; the Plaintiff's would have been with certainly subjected to a dismissal for a lack of the required expert's affidavit. This Complaint was correctly and timely **FILED** on March 17, 2011.

The language wrongfully drafted into and copied into the Court's; the ORDER says '*sometimes in 2007*' likely referred to the **start** of the Daddy Myers Probate matter; while the true start date of this Court of Common Pleas civil action was proper with '**only with any certainty, August 7, 2008.**'

This proper time calculation equates to 2 years 7 months 10days inclusive vice the references in the ORDER (prepared by defendant attorney Mr. Cesar McKnight) [It] states that the three years '*has run*'

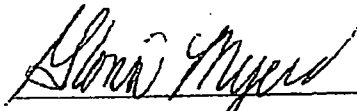
when IN FACT the Plaintiffs were within the three years by more than 4 months and 20 days  
and as such are most timely.

The ORDER and the JUDGEMENT should be VACATED and the Complaint must be re-  
instated and set for the trial w jury demand.

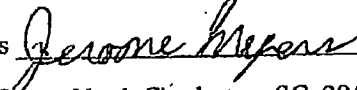
Respectfully submitted this 10th day of December 2012.

BY:

Gloria Myers



Jerome Myers



2321 Taylor Street, North Charleston, SC 29406-6232

(843) 747-6741

Enclosure (3)

(1) ORDER dtd November 6, 2012

(2) JUDGEMENT NOTICE dtd December 3, 2012

(3) EXPERT AFFIDAVIT OF GIDION dtd August 8, 2008.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
 )  
JEROME MYERS AND GLORIA )  
MYERS AS PERSONALLY AND IN HER )  
CAPACITY AS POWER OF ATTORNEY )  
FOR HENRY MYERS )  
VS. )  
CEZAR E. MCKNIGHT, WILLIE O.W. )  
MCFADDEN MYERS AND LATONYA )  
HOBSON )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS NINTH  
JUDICIAL CIRCUIT

CASE NO: 2011-CP-10-2026

MOTION FOR RECONSIDERATION

FILED  
2011 NOV 16 PM 12:25  
JULIE J. ARMSTRONG  
CLERK OF COURT

Pro se Plaintiffs come now and file this motion for reconsideration as it is clear from the record that the Court has mistakenly included Defendants All and Christensen in an order intended to only apply to Defendants Spencer and Daquigan.

By way of background, the Plaintiffs filed a complaint against the named Defendants. The Plaintiffs voluntarily dismissed, with prejudice, Defendants Daquigan and Spencer; the Court properly found that the motion to dismiss as it relates to these Defendants was moot.

However, Defendants All and Christensen's 12(b)(6) motion claiming that the Plaintiffs had failed to state a cause of action for which relief could be granted is not moot. As the Court properly found, once the Plaintiffs filed their motion to amend the complaint and set forth more precisely their claims as it relates to Defendants All and Christensen, the 12(b)(6) is without merit because the theories of Plaintiffs claims were made clear.

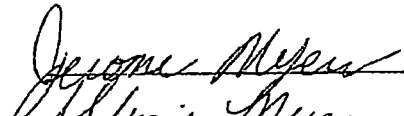
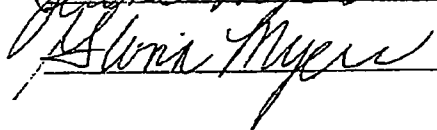
Based on the rationale of the Court, it is clear that the Court mistakenly included All and Christensen in its ruling that the motion for dismissal was moot. A close review of the record reveals that the Court found that Plaintiffs' motion to amend was

meritorious but it could only be meritorious concerning matters that relate to Plaintiffs' claims that relate to Defendants All and Christensen.

For all of the above reasons, the Court should strike the motion to dismiss as it relates to Defendants All and Christensen and allow Plaintiffs to proceed accordingly.

The court should note that a timely motion for reconsideration was improperly filed on the motions calendar. See attached. This motion, properly filed with this Court, is intended to correct that misstep

DATED at Charleston, South Carolina this 16th day of November 2011.

IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

Jerome Myers and Gloria Myers,  
Plaintiffs,

vs.

Dennis J. Christensen; Shelly K. All;  
Cezar E. McKnight; Donald Daquigan;  
Elizabeth Spencer; Ms. Willie O.W.  
McFadden-Myers, and Latonya Hobson  
Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT  
Case No.: 2011-CP-10-2026

ORDER GRANTING PLAINTIFFS'  
MOTION TO AMEND THEIR  
COMPLAINT AND DENYING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT

FILED  
OCT 26 PM 12:35  
JAMES L. ARMSTRONG  
CLERK OF COURT

This matter came before the Court for a hearing on September 9, 2011, for consideration of a number of motions including: 1) Plaintiffs' Motion to Amend Complaint, 2) Plaintiffs' Motion for Summary Judgment and 3) Defendants Daquigan, Spencers, Christensen and All's Motion to Dismiss Pursuant to Rule 12(b)(6). Pro se Plaintiffs and counsel for the Defendants were present, and this Court entertained and considered oral arguments.

Facts

Pro se, sibling litigants bring this suit alleging misrepresentation, fraud, forgery, and breach of fiduciary duty arising out of a conservatorship established for their incompetent father and a power of attorney for their father, which they allege was forged by the Defendants.

Defendants Sgt. Daquigan and Elizabeth Spencer, both employees of the Charleston Police Department, were contacted by the Plaintiffs to report the alleged forgery. They have filed a Motion to Dismiss pursuant to 12(b)(6).

Defendants Dennis Christensen and Shelly All are both attorneys hired by the Plaintiffs to represent them during the appointment of their father's conservatorship. The original complaint appears to allege malpractice, and Defendant Attorneys have filed a Motion to Dismiss pursuant to 12(b)(6).

**Plaintiffs' Motion to Amend Complaint**

Leave to amend the pleadings "shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a) S.C.R.Civ.P. This Court finds the amendment clarifies Plaintiffs' theories of liability and dismisses Defendants who are not proper parties to this action. This Court further finds that granting Plaintiffs leave to amend the complaint is in the interest of justice and will not prejudice remaining Defendants. Therefore, for the aforementioned reasons, Plaintiffs' Motion to Amend Complaint is granted.

**Defendants' Motions to Dismiss**

This Courts order granting Plaintiff's Motion to Amend the Complaint, which dismisses Defendants Daquigan, Spencer, Christensen and All, makes Defendants' Motions to Dismiss moot. Defendants are no longer parties to this action.

**Plaintiffs' Motions for Summary Judgment**

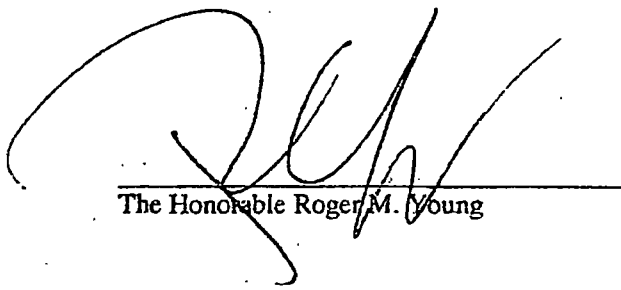
Summary judgment is only appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Garvin v. Bi-Lo, Inc., 343 S.C. 625, 627, 541 S.E.2d 831, 833 (2001). In ruling on a motion for summary judgment, the evidence and the inferences which can be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Id.

After review, this Court finds that genuine issues of fact exist and Plaintiffs are not entitled to judgment as a matter of law and therefore summary judgment is not appropriate at this time. For this reasons, the Plaintiffs' Motions for Summary Judgment are denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

- 1) Plaintiffs' Motion to Amend Complaint is **GRANTED**.
- 2) Defendants Daquigan, Spencer, Christensen and All's Motions to Dismiss are **MOOT**. Defendants are no longer parties to this action.
- 3) Plaintiffs' for Summary Judgment is **DENIED**.

AND IT IS SO ORDERED.

  
\_\_\_\_\_, 2011  
Charleston, South Carolina,

The Honorable Roger M. Young

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

MUTUAL GENERAL RELEASE IN FULL

**KNOW ALL PERSONS BY THESE PRESENTS**, that we JEROME MYERS and GLORIA MYERS ("PLAINTIFFS"), pro se, by these presents do on behalf of ourselves, our heirs, executors and/or administrators and assigns, release and forever discharge DONALD DAQUIGAN, ELIZABETH SPENCER, and the CITY OF CHARLESTON, including its subdivisions, employees, and representative ("DEFENDANTS"), from any and all claims, demands, damages, actions, or causes of action, resulting or to result, and of and from all claims and demands whatsoever, in law or in equity, which we, our heirs, wards, executors, and/or administrators, or assigns can, shall, or may have, by reason of any matter, cause or thing whatsoever prior to the day hereof, from the foundation of the earth to this date, for any damages of any nature sustained by PLAINTIFFS as alleged in the lawsuit filed in the Circuit Court of Charleston County, South Carolina, JEROME MYERS and GLORIA MYERS v. DENNIS J. CHRISTENSEN, SHELLEY K. ALL, CEZAR E. McKNIGHT, WILLIE O.W. McFADDEN, LATONYA HOBSON, DONALD DAQUIGAN, and ELIZABETH SPENCER Case No.: 2010-CP-10-2026, (the "LAWSUIT") including all attorneys' fees and/or costs, claims therefore, and all federal and/or state claims and/or causes of action, and agree to hold DEFENDANTS, its agents, employees, and representatives, harmless and safe therefrom.

It is further agreed that we DONALD DAQUIGAN AND ELIZABETH SPENCER, by these presents do on behalf of ourselves, our heirs, executors and/or administrators and assigns, release and forever discharge PLAINTIFFS, from any and all claims, demands, damages, actions, or causes of action, resulting or to result, and of and from all claims and demands whatsoever, in law or in equity, which we, our heirs, wards, executors, and/or administrators, or assigns can, shall, or may have, by reason of any matter, cause or thing whatsoever prior to the day hereof, from the foundation

of the earth to this date, for any damages of any nature sustained by DONALD DAQUIGAN AND ELIZABETH SPENCER arising from the LAWSUIT, including all attorneys' fees and/or costs, claims therefore, and all federal and/or state claims and/or causes of action.

It is further agreed that this is a full and final MUTUAL GENERAL RELEASE IN FULL (the "RELEASE") of every nature and kind whatsoever, and releases claims that are known and unknown, suspected and unsuspected against PLAINTIFFS AND DEFENDANTS, in connection with the LAWSUIT.

It is further agreed, that there are no collateral or outside agreements of any kind between the parties hereto and that the RELEASE is in accord and satisfaction of disputed claims.

In consideration of the RELEASE, the undersigned also agree that this settlement is the compromise of doubtful and disputed claims and that the RELEASE made thereof is not to be construed as any admission of liability on the part of either PLAINTIFFS OR DEFENDANTS, but rather that this RELEASE is intended to avoid the costs, time and expenses, and uncertainty of legal proceedings and litigation.

The undersigned further declare and represent that no promise or inducement or agreement not herein expressed has been made to them and that this RELEASE contains the entire agreement between the parties hereto, that the terms of this RELEASE are contractual and not a mere recital, and that the proper execution of it and its validity and binding effect are material considerations to the parties hereby released.

The undersigned further agree that a Partial Stipulation of Dismissal with Prejudice signed by PLAINTIFFS and Counsel for DEFENDANT and will be filed with the Charleston County Court of Common pleas dismissing all claims connected with the LAWSUIT against DEFENDANTS with prejudice.

The undersigned agree that this RELEASE is to be governed by and interpreted in accordance with the laws of the State of South Carolina.

We certify by our signatures that we have read and understand the terms of this RELEASE

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25<sup>th</sup> day of August, 2011, in the presence of the below named witnesses.

IN THE PRESENCE OF:

Karla R. O  
witness

Jerome Myers  
JEROME MYERS

Karla R. O  
witness

Gloria Myers  
GLORIA MYERS

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

VERIFICATION

PERSONALLY APPEARED before me, the undersigned witness, who made oath that (s)he saw JEROME MYERS and GLORIA MYERS sign the foregoing General Release, and that (s)he with the other witness witnessed the execution thereof:

Karla R. O  
(Witness)

Signed and sworn to before me  
this 25<sup>th</sup> day of August, 2011.

Elizabeth J. Koloshinsky  
Notary Public for South Carolina  
My Commission Expires: NOTARY PUBLIC NOTARY PUBLIC NOTARY PUBLIC  
ELIZABETH J. KOLOSHINSKY  
NOTARY PUBLIC  
MY COMMISSION EXPIRES: 03-31-2016

[signatures continue on following pages]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JEROME MYERS and GLORIA MYERS,

Plaintiff,

v.

DENNIS J. CHRISTENSEN, SHELLY K.  
ALL, CEZAR E. McKNIGHT, WILLIE O.W.  
McFADDEN Myers, LATONYA HOBSON,  
DONALD DAQUIGAN, and ELIZABETH  
SPENCER,

Defendants.

IN THE COURT OF COMMON PLEAS

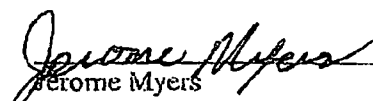
CIVIL ACTION NO.: ~~2010~~-CP-10-2026

2011

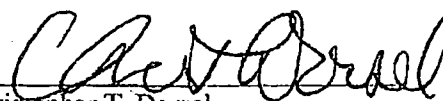
**PARTIAL STIPULATION OF  
DISMISSAL WITH PREJUDICE AS TO  
DEFENDANTS DAQUIGAN AND  
SPENCER ONLY**

FILED  
2011 SEP - 1 PM 3:41  
JULIE J. ARMSTRONG  
CLERK OF COURT

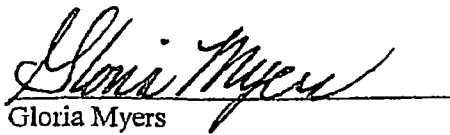
Upon the stipulation of the Plaintiffs, pro se, and the attorneys for Defendants Daquigan and Spencer, plaintiffs hereby dismiss all causes of action against Defendants Donald Daquigan and Elizabeth Spencer in the above captioned case with prejudice and stipulate that plaintiffs are forever barred from instituting or maintaining any further action against said defendants in regard to the matters set forth in the Complaint herein.

  
Jerome Myers  
2321 Taylor Street  
Charleston, SC 29406

Plaintiff, *pro se*

  
Christopher T. Dorsel  
Senn, McDonald & Leinbach, LLC  
P.O. Box 12279  
Charleston, SC 29422

Attorney for Defendants Donald Daquigan  
and Elizabeth Spencer



Gloria Myers  
2321 Taylor Street  
Charleston, SC 29406

Plaintiff, *pro se*



JOSEPH P. RILEY, JR.  
Mayor

*City of Charleston*

SOUTH CAROLINA

POLICE DEPARTMENT

November 7, 2008

GREGORY G. MULLEN  
Chief of Police

To Whom It May Concern:

On or about March of 2008, Mrs. Gloria Myers drop off documents involving her father signature on a possible questionable power of attorney document, to me (Sgt. Donald Daquigan). I then in turn the documents over to Elizabeth Spencer, who is with the Charleston Police Dept. Elderly Support Unit. On 11/07/08, Mrs. Spencer returned the documents to me, and I then returned the documents to Mrs. Gloria Myers.

Respectfully submitted

Sgt. Donald Daquigan

Charleston P.D.

(843) 720-2487

daquigand@ci.charleston.sc.us



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jerome Myers & Gloria Myers,

Plaintiffs,

Vs.

Cezar E. McKnight, Willie O.W.

McFadden-Myers, & Latonya Hobson,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

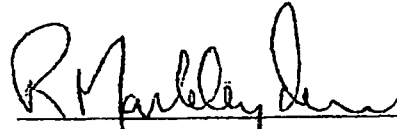
CASE NO: 2011-CP-10-2026

ORDER

FILED  
2013 JAN 25 PM 2:51  
JULIE J. ARMSTRONG  
CLERK OF COURT

This matter comes before me upon first Motion for Reconsideration filed by Plaintiffs on October 30, 2012 and second Motion for Reconsideration filed by Plaintiff's on December 11, 2012. The Order of Dismissal with Prejudice, which Plaintiffs are asking this Court to reconsider was filed in this case on December 03, 2012, therefore the October 30, 2012 Motion for Reconsideration was filed prematurely. After fully considering both said Motions, this Court finds no need for oral argument in this matter and therefore both Motions for Reconsideration are denied;

AND IT IS SO ORDERED!

  
The Honorable R. Markley Dennis, Jr.  
Presiding Judge, 9<sup>th</sup> Circuit

Charleston, South Carolina  
January 22, 2013

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS

Jerome Myers, et al.,  
PLAINTIFF,

TRANSCRIPT OF COURT RULING  
C/A #:2011-CP-10-02026

v.

Cezar E. McKnight, et al.  
DEFENDANT.

CHARLESTON COUNTY COURTHOUSE  
February 11, 2013

BEFORE:

HONORABLE MARKEY DENNIS, PRESIDING JUDGE.

APPEARANCES:

Mr. Jerome Myers  
Ms. Gloria Myers

TAKEN BY MELISSA R. SINGLETARY  
CERTIFIED VERBATIM REPORTER

INDEX

PAGE

Certificate of Service . . . . . 2

EXHIBITS

(There were no exhibits marked)

1           The Court: Jerome Myers. Motion to Dismiss. I've  
2 already ruled on that. I ruled on it based on the  
3 Memorandums that were submitted in the motion. So, the  
4 motion has been resolved. I deny the motion to  
5 reconsider. So, the original Order is the final Order.

6           Mr. Myers: So ...

7           The Court: The original Order that I filed becomes  
8 the Order of the case.

9           Mr. Myers: Yes, sir, but we were ready to go to a  
10 jury trial.

11          The Court: I understand. I dismissed your action  
12 and that Order stands, so you can take the next step if  
13 you want to. That means you appeal my Order.

14          Mr. Myers: Okay. Thank you, sir.

15          Ms. Myers: Thank you.

16          The Court: Thank you. Sorry to keep you waiting.

17          Ms. Myers: No problem. Thank you very much.

18          The Court: You're very welcome.

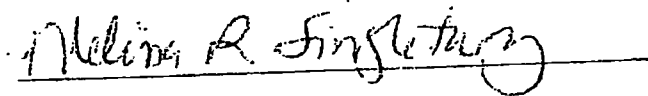
19          (End)  
20  
21  
22  
23  
24  
25

**CERTIFICATE**

This is to certify that the transcript in the matter of Jerome Myers, et al. Vs. Cezar E. McKnight, consisting of One (1) page is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 17<sup>th</sup> day of June, 2013.



Melissa R. Singletary  
Certified Court Reporter

Notary Public for South Carolina  
My Commission Expires: 3-5-2014

### **CONCLUSION**

The Appellant pray for the Court of Appeals to apply the arguments above and the Plaintiffs Statement to reverse the err caused the Judge Dennis having used the 'cast iron' three years Statute of Limitations, SC Code 15-3-530 when (I) should have used the more proper Equitable Tolling dates from either October 18, 2008 and or November 7, 2007 until March 17, 2011, when the complaint was filed to REVERSE or REMAND our civil action for jury trial in Charleston County Court Common Pleas.

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.

October 11, 2013

  
Jerome Myers  
  
Gloria Myers

Gloria Myers  
2321 Taylor Street  
N. Charleston, SC 29406  
(843)747-6741

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

---

S.C.C.A. Case No. 2013 - 000371

Case No. 2011-CP-10-2026

---

Jerome Myers & Gloria Myers, Appellants,

v.

Shelly K. All; Cezar E. McKnight; Ms. Willie O.W. McFadden-Myers; & Latonya Hobson,  
Respondents.

---

**Certificate of Counsel &**

**Certificate of Service**

**RECORD ON APPEAL**

---

**Certificate of Counsel:** Rule 209(c) -- The Appellants ~~or his counsel shall~~ certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material; &

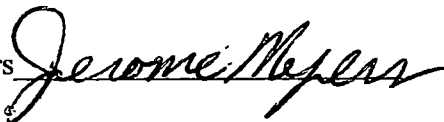
**Certificate of Service:** The Appellant's, Gloria Myers and Jerome Myers, by affixing their signatures below, herein certify that the Rule 210(a) -- RECORD ON APPEAL has been placed in the USPS with first class postage affixed to "*each party who has served a Brief*":

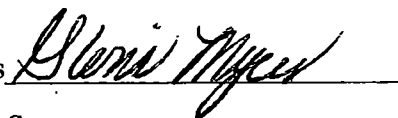
1. Shelly K. All (& Dennis Christensen)'s, 260 W. Coleman Blvd., Ste D, Mt. Pleasant, SC 29464  
(843) 971-1199

*Signature following page*

2. Cezar E. McKnight, 106 East Main St. Lake City, SC 29560 843-374-4529
3. Willie O.W. McFadden-Myers, 301 Lexington Ave, Kingstree, SC 29556
4. Latonya Hobson, 3213 Oak Spring St. Columbus, OH 43219

September 16, 2013 BY:

Jerome Myers 

Gloria Myers 

2321 Taylor St.

North Charleston, SC 29406-6232

(843)747-6741

RECEIVED

AUG 01 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

RECEIVED

FEB 19 2014

SC Court of Appeals

S.C.C.A. Case No. 2013 - 000371

Case No. 2011-CP-10-2026

Jerome Myers & Gloria Myers, Appellants,

v.

Shelly K. All; Cezar E. McKnight; Ms. Willie O.W. McFadden-Myers; & Latonya Hobson,  
Respondents.

Certificate of Counsel &

Certificate of Service

RECORD ON APPEAL

RECEIVED

MAY 29 2015

SC Court of Appeals

**Certificate of Counsel:** Rule 209(c) -- The Appellants ~~or his counsel~~ shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material; &

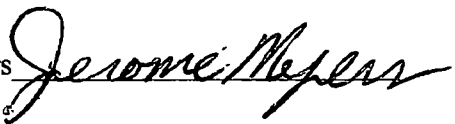
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4. Latonya Hobson, 3213 Oak Spring St. Columbus, OH 43219

September 16, 2013      BY:

Jerome Myers 

Gloria Myers 

2321 Taylor St.

North Charleston, SC 29406-6232

(843)747-6741