

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
The Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No: 2009-CP-23-10754

Dallah Forrest and Summersett Golf, Inc.....Appellant.

RECEIVED

MAY 11 2012

v.

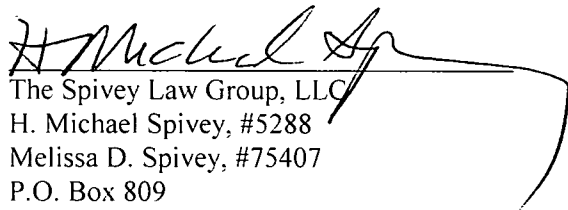
SC Court of Appeals

Brad Marett.....Respondent

NOTICE OF APPEAL

Appellant, Dallah Forrest and Summersett Golf, Inc., appeal the Order of Judgment of the Honorable D. Garrison Hill, 13th Judicial Circuit Judge, dated March 15, 2012 and filed on March 16, 2012. Appellant received written notice and entry of this Order on March 20, 2012. Appellant filed a Rule 59(e) Motion on March 30, 2012 and the same was denied by Order dated April 9, 2012, Filed on April 12, 2012 and received on April 13, 2012.

May 10, 2012.


The Spivey Law Group, LLC
H. Michael Spivey, #5288
Melissa D. Spivey, #75407
P.O. Box 809
Mauldin, SC 29662
(864) 288-6503
(864) 288-0351 facsimile
Attorneys for Appellant

Other Counsel of Record:

Mr. J. Bradley Bennett
Salvani & Bennett, LLC
101 W. Park Avenue
Greenville, SC 29601
Telephone: (864) 232-5800
Fax: (864) 232-5888

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
The Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

Case No: 2009-CP-23-10754

Dallah Forrest and Summersett Golf, Inc.....Appellant.

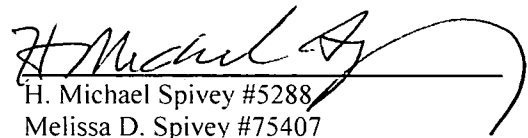
v.

Brad Marett.....Respondent

PROOF OF SERVICE

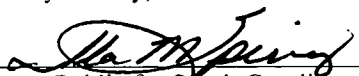
PERSONALLY appeared before me H. Michael Spivey who, being duly sworn deposes and states that he did serve the original and Six (6) Copies of the Notice of Appeal, Check in the amount of \$100.00 for the filing fee, Final Order dated March 15, 2012, the Order denying the Motion to Reconsider filed April 12, 2012, letter to Court Reporter Hollie Jenkins requesting Transcript, The Original Proof of Service on J. Bradley Bennett and the Original Proof of Service on Paul B. Wickensimer, Clerk of Court for Greenville County, upon the below listed individual on the 10th day of May, 2012, by overnighting same via Federal Express to the following address:

Ms. Jenny A. Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201



H. Michael Spivey #5288
Melissa D. Spivey #75407
Attorney for Appellant
Post Office Box 809
Mauldin, S.C. 29662
Ph: 864-288-6523
Fax: 864-288-0351

Subscribed and sworn to before me this
10th day of May, 2012.


Notary Public for South Carolina
My Commission Expires: 2-25-2020

**IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE GREENVILLE COUNTY COURT OF COMMON PLEAS

THE HONORABLE D. GARRISON HILL
CIRCUIT COURT JUDGE

C.A. NO.: 2009-CP-23-10754

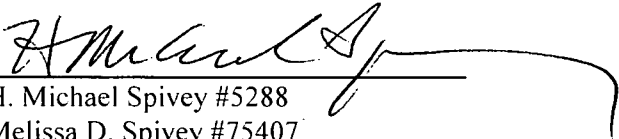
Dallah Forrest and Summersett Golf, Inc.....Respondent,
vs.

Brad Marett.....Appellant.

PROOF OF SERVICE

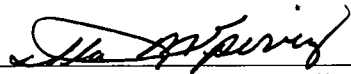
PERSONALLY appeared before me H. Michael Spivey who, being duly sworn deposes and states that he did serve one (1) Notice of Appeal, Letter requesting transcript to Court Reporter Hollie M. Jenkins, Letter to Jenny Abbott Kitchings and Proof of Service upon the below listed individual on the 10th day of May, 2012 by first class mail, postage prepaid to the following address:

Mr. J. Bradley Bennett
Salvani & Bennett, LLC
101 W. Park Avenue
Greenville, SC 29601



H. Michael Spivey #5288
Melissa D. Spivey #75407
Attorney for Respondent
Post Office Box 809
Mauldin, S.C. 29662
Ph: 864-288-6523
Fax: 864-288-0351

Subscribed and sworn to before me this
10th day of May, 2012.



Notary Public for South Carolina
My Commission Expires: 2-25-2020

**IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE GREENVILLE COUNTY COURT OF COMMON PLEAS

THE HONORABLE D. GARRISON HILL
CIRCUIT COURT JUDGE

C.A. NO.: 2009-CP-23-10754

Dallah Forrest and Summersett Golf, Inc.....Respondent,
vs.

Brad Marett.....Appellant.

PROOF OF SERVICE

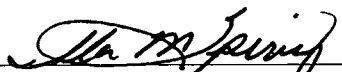
PERSONALLY appeared before me H. Michael Spivey who, being duly sworn deposes and states that he did serve one (1) Notice of Appeal, Letter requesting transcript to Court Reporter Hollie M. Jenkins, Letter to Jenny Abbott Kitchings and Proof of Service upon the below listed individual on the 10th day of May, 2012 by first class mail, postage prepaid to the following address:

Mr. Paul B. Wickensimer
Clerk of Court
305 East North Street, Suite 232
Greenville, SC 29601



H. Michael Spivey #5288
Melissa D. Spivey #75407
Attorney for Respondent
Post Office Box 809
Mauldin, S.C. 29662
Ph: 864-288-6523
Fax: 864-288-0351

Subscribed and sworn to before me this
10th day of May, 2012.


Notary Public for South Carolina
My Commission Expires: 2-25-2020

64165

THE SPIVEY LAW GROUP, LLC
ATTORNEYS AT LAW
WOODRUFF ROAD CORPORATE CENTER
224 ADLEY WAY
GREENVILLE, SC 29607

H. Michael Spivey
Melissa D. Spivey

MAILING ADDRESS
P.O. BOX 809
MAULDIN, SC 29662

PHONE: (864) 288-6503
FAX: (864) 288-0351
hmichaelspivey@bellsouth.net

May 10, 2012

Via Federal Express Overnight:

Ms. Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
MAY 11 2012

RE: Brad Marett vs. Dallah Forrest and Summersett Golf, Inc.
Case Number: 2009-CP-23-10754

SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the following in regard to the above referenced appeal:

- (1) The Original Notice of Appeal;
- (2) The Final Order dated March 15, 2012 and filed on March 16, 2012 and received on March 20, 2012;
- (3) The Rule 59 (e) Motion to Reconsider which was denied by filing on April 12, 2012 and received on April 13, 2012;
- (4) The Letter to Court Reporter Hollie Jenkins requesting the transcript;
- (5) The original Proof of Service on J. Bradley Bennett, Attorney for Respondent;
- (6) The original Proof of Service on Paul B. Wickensimer, Clerk of Court for Greenville County;
- (7) The original Proof of Service on your office; and
- (8) A check in the amount of \$100.00 to cover the filing fee associated therewith.

If you should have any questions or require anything further, please feel free to contact my office.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Michael Spivey", with a long, sweeping horizontal flourish extending to the right.

H. Michael Spivey
Attorney and Counselor at Law

HMS/ims

cc: J. Bradley Bennett, Esquire
Paul B. Wickensimer, Clerk of Court for Greenville County

Enclosures (As Noted Above)

Recd 3-20-12
p.3/beam
MS

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

2012 MAR 15 P M 11:00 CASE NO: 2009CP2310754

IN THE COURT OF COMMON PLEAS

Brad Maret vs. Dallah Forrest

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

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(a), 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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 16th day of March, 2012, and a copy mailed first class this 16th day of March, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Joseph Bradley Bennett Salvini & Bennett Llc 101
W Park Ave. Greenville, SC 29601

H. Michael Spivey P.O. Box 809 Mauldin, SC
29662

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Brad Maret,)

2012 MAR 16 10 40

CASE NO.: 2009-CP-23-10754

Plaintiff/Appellee,)

vs.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 MAR 16 10 40

ORDER

Dallah Forrest & Summersett Golf, Inc.,)

Defendant/Appellant.)

This is an appeal from the judgment of the Magistrate's Court, requesting a reversal of the jury's verdict in the matter of *Brad Maret vs. Dallah Forrest*, Case No. 2006-CV-23-10900323. A hearing was held on April 13, 2011. Plaintiff/Appellee was represented by J. Bradley Bennett, Esquire, and Defendant/Appellant was represented by H. Michael Spivey, Esquire. Based on all the evidence of record and the applicable law, the judgment of the Magistrate is affirmed for the reasons that follow.

PROCEDURAL HISTORY

On or about April 18, 2006, Plaintiff/Appellee filed a Summons and Complaint in Magistrate's court against Defendant/Appellant alleging causes of action for breach of contract, fraud and misrepresentation, and nuisance. Defendant/Appellant filed a timely Answer and Counterclaim against Plaintiff/Appellee generally denying the allegations of Plaintiff's Complaint and asserting counterclaims for assault and intentional infliction of emotional distress.

A jury trial was held on March 23, 2007. In a Judgment filed on March 26, 2007, the jury rendered a verdict in favor of the Plaintiff/Appellee and awarded him damages in the amount of \$7,500.00.

On April 25, 2007, Defendant/Appellant timely filed a Notice of Civil Appeal with the Court of Common Pleas (C/A No. 2007-CP-23-2708), requesting an Order reversing the jury's

verdict. On August 24, 2007, Plaintiff/Respondent filed a Memorandum in Opposition to Appellant's Appeal, asking the Court to affirm the jury's verdict. On September 24, 2007, the Circuit Court reversed the verdict and remanded the matter for a new trial on the merits.

A retrial was held on December 10, 2009. The jury rendered the same verdict in favor of the Plaintiff/Appellee and awarded him damages in the amount of \$7,500.00. On December 21, 2009, Defendant/Appellant timely filed a second Notice of Civil Appeal with the Court of Common Pleas, requesting an Order reversing the jury's verdict in the retrial of the matter. Oral arguments were held before this Court on April 13, 2011.

ORDER

SECTION 18-7-170 OF THE SOUTH CAROLINA CODE (1985) sets forth the standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment:

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

See also Hadfield v. Gilchrist, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct. App. 2000).

"Even if error was committed in the trial of the case, the appellant, in order to be entitled to reversal, must show that such error was prejudicial to its rights or influenced the magistrate in giving judgment for the plaintiff." *Stukes vs. Life Ins. Co. of Virginia*, 163 S.C. 216, 161 S.E. 478 (S.C. 1931). Defendant/Appellant bears the burden of proving error. *See id.*

On appeal, Appellant argued that the damage award by the jury was speculative and that there was insufficient evidence for the jury to award \$7,500.00 to Plaintiff. After a careful review of the entire record, including the Magistrate's Return, transcript testimony of all witnesses and exhibits from the trial, which is incorporated herein by reference, the Court finds

the Plaintiff/Appellee met his burden of providing sufficient evidence of the existence, causation and measure of damages. Further, this Court finds that no reversible error was committed by the trial judge nor were the Defendant/Appellant's rights prejudiced therein.

THEREFORE IT IS ORDERED that Defendant/Appellant's request for an Order of this Court reversing the jury's verdict in the matter of *Brad Marett vs. Dallah Forrest*, Case No. 2006-CV-23-10900323 is hereby denied and the judgment is affirmed.

AND IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

March 15, 2012
Greenville, South Carolina

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FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP2310754

2012 APR 10 AM 8:51

Brad Marrett

Dallah Forrest
Summersett Golf, Inc.

PLAINTIFF(S)

DEFENDANT(S)

FILED-CLERK OF COURTS
GREENVILLE COUNTY
PAUL B. WICKPHYSINES

Submitted by:

Attorney for: Plaintiff Defendant
 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 43(k), SCRPC (Settled);
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Non-suit);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

2012 APR 10 8 51
FILED-CLERK OF COURTS
GREENVILLE COUNTY
PAUL B. WICKPHYSINES

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 to Reconsider is respectfully denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

