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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

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SC Court of Appeals

**APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS**

IN CASE NO. 2009-CP-1000685, THE HONORABLE MIKELL R. SCARBOROUGH

Case No. 2016-000827

CHARLESTON HARBOR RESORT & MARINA.....Respondent,

v.

PAUL DAVIS.....Appellant.

**RESPONDENT'S RESPONSE TO APPELLANT'S
PETITION FOR WRIT OF CERTIORARI**

The Appellant's Petition for Writ of Certiorari should be denied because there are no novel questions of law, there was no descent in the decision by the Court of Appeals, the Petition fails to meet the requirements of Rule 242 of the Appellate Court Rules,¹ the questions presented for review were properly addressed and decided by the Court of Appeals, and the Petition fails to address all of the issues which otherwise support the Court of Appeals' decision.

¹ Appellant failed to provide an Appendix with its Petition for Writ of Certiorari as required by Rule 242 SCACR. The Appellant also failed to prepare or submit an Appendix with the Appellate Brief to the Court of Appeals. As a result, the Respondent prepared and submitted Respondent's Record on Appeal that the Court of Appeals accepted under the circumstances. (Court of Appeals letter dated June 1, 2015.) References in this Response are to Respondent's Record on Appeal and are designated as (R. p ...) as they were in the Record submitted to the Court of Appeals. If this Court requests an Appendix as required by Rule 242 SCACR, the Respondent will prepare and provide an Appendix, including all of the required documents.

This case involves dockage owed by the Appellant for a boat that was moored at the Charleston Harbor Resort & Marina. The Appellant does not dispute that he owes the money, but contends that he was never properly served or notified of a complaint in any way. The Court of Appeals found that he was properly served and dismissed the appeal.

STATEMENT OF THE CASE

This case involved collection of dockage fees for a 45' sail boat pursuant to a License Agreement for Dockage (hereinafter "Agreement") between Charleston Harbor Resort & Marina (hereinafter "the Marina") and Paul Davis (hereinafter "Davis"). Davis kept his sailing vessel, Grand Cru, at the Marina from April 2007 to May 2008. In January of 2009, the Marina filed a complaint in the Small Claims Court for unpaid dockage. Davis failed to file an answer or other responsive pleading and the Small Claim Court entered Judgment against Davis on April 3, 2009. On May 15, 2013, the Honorable Roger Young, Circuit Court Judge, issued an Order for Supplemental Proceedings in the case. Davis, through his attorney, John Hughes Cooper, Esquire, filed a Notice of Motion, Motion for Relief from Judgment, and a Memorandum in Support on June 14, 2013. By Order dated August 5, 2013, The Honorable R. Markley Dennis, Jr. denied the Defendant's Motion for Relief without Prejudice. Davis did not file a Motion for Reconsideration or appeal the Order. A hearing was held in front of the Honorable Michael R. Scarborough on August 19, 2013, and the motion was again denied. A written Order was issued by Judge Scarborough on April 10, 2014, denying Davis' motion. The Court found that Davis was properly served, that Davis failed to file his Motion for Relief from Judgment within a reasonable time, Davis failed to file a motion with the Small Claims Court, and Davis failed to appeal the Order issued by Judge Dennis on August 5, 2013.

The Court of Appeals affirmed the decision issued by the Master of Equity, Michael R. Scarborough, on February 7, 2016. The Court of Appeals denied the Appellant's Petition for Reconsideration by Order dated March 28, 2016.

STATEMENT OF FACTS

This case involves the collection of a debt of dockage for a 45' sailboat named Grand Cru. Davis does not dispute that he owes the money.

On April 19, 2007, Davis entered into the Agreement for dockage for the sailing vessel, Grand Cru, with the Marina. (R. p. 20, Agreement). On the first line of the Agreement Davis listed himself as "Owner." *Id.* On the second line of the Agreement Davis listed his address as "101 North Fairfield Drive, Dover, DE 19901-5720. *Id.* The Licensing Agreement provides,

Notices to Boat Owner shall be deemed to be served properly if posted in writing addressed to Boat Owner at a place and in a manner on the vessel which is reasonably susceptible of giving notice to anyone lawfully boarding the vessel and by mailing written notice to Boat Owner by mail, postage prepaid at the address set forth in this License Agreement for Boat Owner or to such other address as Boat Owner shall have last designated by written notice to Marina. (R. p. 22, Agreement).

The Vessel had been documented with the USCG, documentation No. 1056595; however, the documentation expired on June 30, 2006. (R. p. 15, National Vessel Documentation Center Certification of Documentation for Vessel Grand Cru). The documentation identifies the owner as Chesapeake Venture Corp., 101 North Fairfield Drive, Dover, DE 19901. (*Id.*). On March 1, 2008, the charter for Chesapeake Venture Corp. was revoked for non-payment of taxes and/or failure to file a complete annual report. (R, p. 61, State of Delaware Certificate for Renewal and Revival of Charter dated April 17, 2013).

On January 16, 2009, the Marina filed a Complaint against Davis in the Small Claims

Court for unpaid dockage. (R. pp. 26-27). On January 28, 2009, the Complaint was sent via U.S. Mail to Paul Davis at 101 North Fairfield Drive, Dover, DE 19901. (R. p. 25, Letter to Paul Davis dated January 28, 2009). The letter was not returned by the U.S. Mail. On February 4, 2009, a process server served the Complaint on Joyce Lockhart as registered agent for Paul Davis at 505 Brookfield Drive, Dover, Delaware.² (R. p. 28, Return of Private Process Servicer Daniel F. Delcollo dated February 18, 2009). Ms. Lockhart is over the age of 18, and was and is employed by Corporate Systems, Inc. (R. pp. 62-63, Affidavit of Joyce Lockhart dated June 10, 2013). Lockhart knew Davis and that he was the owner of Chesapeake Venture Corp. *Id.* Corporate Systems was the registered agent for Chesapeake Venture Corp. *Id.* Davis did not file an answer or otherwise appear in the underlying action.

On April 3, 2009, judgment was entered against Davis by the Small Claims Court in the amount of \$5,286.56. (R. p. 14, Transcript of Judgment dated April 3, 2009). On April 28, 2009, the Transcript of Judgment was filed in Circuit Court.

In another case against Davis for failure to pay dockage, *Sunset Cay v. Davis*, Case 2012-CV-1010600380 (R. pp. 30-31), the attorneys for Sunset Cay Marina, who also represents the Plaintiff/Respondent in this action, sent a settlement proposal to Wendy Keefer, Esq., the attorney for Davis at that time, that states, “There is an existing Judgment against Mr. Davis in favor of Charleston Harbor Resort and Marina for \$5,286.56” (R. pp. 33-34, Letter to Wendy J. Keefer, Esquire, dated June 8, 2012). Ms. Keefer forwarded the letter to Davis on June 11, 2012. (R. p. 35, Email from Wendy Keefer to Lynn Davis dated June 11, 2012).

² The address for Corporate Systems, Inc. changed from 101 North Fairfield Drive, Delaware, to 505 Brookfield Drive, Dover Delaware.

Davis continued to claim to be the owner of the vessel in the litigation between Sunset Cay Marina and Davis. Davis alleged in his Answer that “an entity owned solely by Davis is the registered owner of the vessel but that entity no longer exists or operates and that its property is now the property of Davis.” (R. p. 44; see also, R. p. 36, Defendants’ Answer and Counterclaim dated June 12, 2012).

On April 17, 2013, Davis renewed and revived the charter for Chesapeake Venture Corp., and listed Corporate Systems, Inc. as the registered agent. (R. p. 61, State of Delaware Certificate of Renewal and Revival of Charter dated April 17, 2013). Davis also renewed the documentation for the vessel with the United States Coast Guard and identified Chesapeake Venture Corp. as the owner.

June 18, 2013, Davis filed a complaint in federal court, Civil Action No. 2:13-cv-01657, against Gary Schwab, d/b/a Sunset Cay Marina, claiming the Vessel was owned by Chesapeake Venture Corp. and that he was not the owner of the Vessel, but that he had chartered the vessel. (R. pp. 47-60, *Chesapeake Venture Corp., et al. v. Sunset Cay Marine, et al.*, Civ. No. 2:13-cv-01657-DCN (D.S.C. filed June 18, 2013)).

ARGUMENT

I. THE PETITION PROVIDES NO NOVEL ISSUES OF LAW.

The Court of Appeals affirmed the lower court decision based on well-established law concerning service of process pursuant to Rule 4(d)(1), South Carolina Rules of Civil Procedure (SCRCP), citing *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 267, 750 S.E.2d 615, 620 (Ct. App. 2013)(noting South Carolina courts have “never required exacting compliance with the rules to effect service of process” (quoting *Roche v. Young Bros. of Florence*, 318 S.C. 207, 209-10, 456

S.#.2 897, 899 (1995); *id.* (“Rather, [courts] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” (quoting *Roche*, 318 S.C. at 210, 456 S.E.2d at 899); *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 10, 615 S.E.2d 112, 115 (2005)(“An agent’s authority is composed of his or her actual authority, whether express or implied, together with the apparent authority which the principal by his or her conduct is precluded from denying.”)

Since the Petition presents no novel issues of law, the Petition should be denied.

II. THE PETITION FAILS TO MEET THE REQUIREMENTS OF RULE 242 OF THE SOUTH CAROLINA APPELLATE COURT RULES.

The *Pro Se* Appellant failed to follow Rule 242, South Carolina Appellate Court Rules (SCACR), in that the Appellant failed to provide a concise statement of the case containing the facts material to the consideration of the questions presented, Rule 242(d)(3), SCACR, and failed to provide a direct and concise argument in support of the Petition as required by Rule 242(d)(4), SCACR. Further, the Appellant failed to submit an appendix as required by Rule 242(e), SCACR.

Since the Appellant failed to file pursuant to the Appellate Court Rules, the Petition should be dismissed.

III. THE APPELLANT’S ARGUMENTS ARE UNSUPPORTED BY THE RECORD.

The Appellant argues that the Appellate Court erred because Appellant “had the right of receiving proper service” and the Appellant was “never served or notified of Respondent’s complaint in any way.”

The Appellant’s arguments are unsupported by the Record. The Lease Agreement

provides that:

Notices to Boat Owner shall be deemed to be served properly if posted in writing addressed to Boat Owner at a place and in a manner on the vessel which is reasonably susceptible of giving notice to anyone lawfully boarding the vessel and by mailing written notice to Boat Owner by mail, postage prepaid at the address set forth in this License Agreement for Boat Owner or to such other address as Boat Owner shall have last designated by written notice to Marina. (R. p. 22, Agreement).

Davis was properly served at the address he gave as his address as owner of the vessel on the Agreement. The first line of the Agreement identifies Davis as the "Owner's Name." (R. p. 20, Agreement). The second list "101 N. Fairfield Drive, Dover, Delaware 19901-5720"³ as the "Address" for the owner. *Id.* Davis was served at that address by hand delivering a copy of the Summons and Complaint to Joyce Lockhart. (R. p. 26, Return of Private Process Server Daniel F. Delcollo dated February 18, 2009).

Service was proper for two reasons. First, service was proper on Ms. Lockhart because she resides at the address listed by Davis on the Agreement and she is over the age of 18. (R. p. 62, Affidavit of Joyce Lockhart dated June 10, 2013). Second, the lower court properly concluded that Lockhart was the agent for Davis. The lower court concluded that Davis, by identifying himself as the owner and giving the address of Corporate Systems, Inc. to the Marina, appointed Corporate Systems, Inc. as his agent for service of process. The Marina perfected service on Davis by serving his agent. Rule 4(d)(1), SCRCPP. Since the Appellant identified himself as the owner of the vessel with an address where he was served, service was proper.

Further, Davis received notice of the judgment no later than June 11, 2012, when his

³ The address was for Corporate Systems, Inc., and was later changed from 101 North Fairfield Drive, Dover, DE to 505 Brookfield Drive, Dover, DE. (R. p. 28).

attorney, Wendy Keefer, was made aware of the judgment. (R. pp. 33-34, Letter to Wendy Keefer, Esquire, dated June 8, 2012). Ms. Keefer forwarded the letter advising of the judgment to Davis. (R. p. 35, Email from Wendy Keefer to Lynn Davis dated June 11, 2012). However, Davis took no action to contest the judgment for over a year. Davis waited until June 14, 2013, after Supplemental Proceedings were initiated in this case, before contesting the judgment. Once Davis learned of the judgment in June of 2012, he had an affirmative obligation to contest it within a reasonable time if he intended to do so. He did not. Further, there is nothing in the record that suggests that the amount due is not legitimate or that Davis has a meritorious defense.

Finally, the Record is void of any document or statement by the Appellant that he actually did not receive notice of the complaint or the judgment.

Based on the Record, the Appellant was served at the proper address, had knowledge of the judgment, and took no action. The Appellant's arguments are unsupported by the Record. Therefore, there is no basis to overturn the decision by the Court of Appeals.

IV. THE DECISION BY THE COURT OF APPEALS COULD BE AFFIRMED ON OTHER GROUNDS.

The Court of Appeals affirmed the lower court's decision based on the Appellant receiving proper notice. The Court of Appeals did not address two arguments that would have also resulted in a dismissal of the appeal. First, the lower court correctly ruled that in supplemental proceedings, the Court accepts that a judgment as valid, and that Davis failed to file a motion to set aside the judgment in the correct court. (R. p. 12, Order dated April 10, 2014, p. 8).

Davis did not file an appeal in the proper court. In this case, the judgment Davis appeals from was entered by the Small Claims Court. Rule 12, South Carolina Rules of Magistrates

Court (SCRMC), provides for an appeal from a final judgment when a judgment is void. Rule 12(b)(4), SCRMC. The motion must be filed with a reasonable time. *Id.* In this case, since the judgment Davis challenges was issued by the Small Claims Court, Davis had to file a motion for relief from the judgment in the Small Claims Court, as opposed to the circuit court. The Master-in-Equity did not have jurisdiction to vacate the order because it assumed the judgment entered by the Small Claims Court was valid.

Since Davis failed to challenge the judgment in the proper court, the lower court properly determined that the judgment was valid. Therefore, this appeal should be denied.

Second, the appeal should be dismissed because Davis failed to appeal the judgment issued by Judge Dennis on August 5, 2013, denying the Motion. (R. p. 13, Order dated April 10, 2014, p. 9).

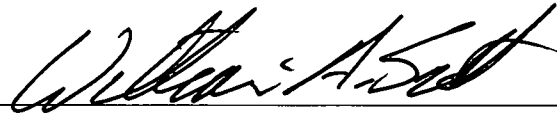
Notice of an appeal must be filed within thirty (30) days of a final order. Rule 203, (SCACR). In this case, Judge Dennis issued a written Order on August 5, 2013 denying Davis' motion for relief from judgment. (R. p. 4, Judgment denying Defendant's Motion for Relief Without Prejudice dated August 5, 2013). Davis did not appeal that order. Instead, Davis scheduled a hearing with the Master in Equity, argued the motion, and then filed an appeal. The failure to appeal the Order issued by Judge Dennis precludes the appeal of the Order issued by Judge Scarborough, and this appeal should be denied.

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted.

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)
775 St. Andrews Blvd.
Charleston, SC 29412
Tel. (843) 556-5656
Fax: (843) 556-5635
Email: bscott@pslawpc.com

ATTORNEY FOR RESPONDENT

Dated this 13th day of June, 2016

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

IN CASE NO. 2009-CP-1000685, THE HONORABLE MIKELL R. SCARBOROUGH

Case No. 2016-000827

CHARLESTON HARBOR RESORT & MARINA.....Respondent,

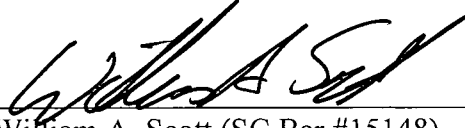
v.

PAUL DAVIS.....Appellant.

PROOF OF SERVICE

I certify that I have served the *Respondent's Response to Appellant's Petition for Writ of Certiorari* by depositing a copy of it in the United States Mail, postage prepaid, on June 13, 2016, addressed to *Pro Se* Appellant Paul Davis, 14639 C.R. Koon Highway, Newberry, SC 29109 and Paul Davis, 107 Averill Lane, Irmo, SC 29063.

PEDERSEN & SCOTT, P.C.



William A. Scott (SC Bar #15148)
775 St. Andrews Blvd.
Charleston, SC 29412
Tel. (843) 556-5656
Fax: (843) 556-5635
Email: bscott@pslawpc.com

ATTORNEY FOR RESPONDENT

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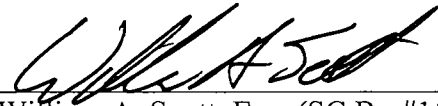
v.

PAUL DAVIS.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Respondent's Response to Appellant's Petition for Writ of Certiorari complies with Rule 242, SCACR.

PEDERSEN & SCOTT, P.C.



William A. Scott, Esq. (SC Bar#15148)
775 St. Andrews Boulevard
Charleston, SC 29407
Tel: (843) 556-5656
Fax: (843) 556-5635
Email: bscott@pslawpc.com

Attorney for Respondent

Dated: June 13, 2016
Charleston, South Carolina

PEDERSEN & SCOTT, P.C.
ATTORNEYS AT LAW

P 843-556-5656
F 843-556-5635
bscott@pslawpc.com

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SC Court of Appeals

June 13, 2016

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Paul Davis v. Charleston Harbor Resort & Marina
Case No. 2009-CP-1000685
Appeals Court No.: 2016-000827

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of the Respondent's Response to Appellant's Petition for Writ of Certiorari.

By way of this letter, a copy of the Respondent's Response to Appellant's Petition for Writ of Certiorari has been mailed to the Appellant.

Please contact me if you have any questions.

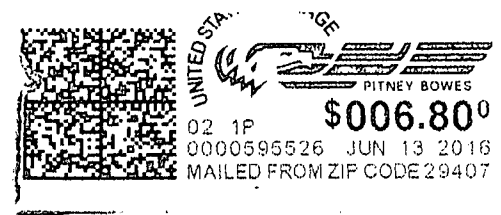
With regards,



William A. Scott

WAS/teb
Enclosures
cc: Paul Davis
Charleston Harbor Resort & Marina

William A. Scott, Esq.
Pedersen & Scott, P.C.
775 St. Andrews Boulevard
Charleston, SC 29407



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Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

William A. Scott, Esq.
Pedersen & Scott, P.C.
775 St. Andrews Boulevard
Charleston, SC 29407



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