

**PROOF OF SERVICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**  
JUL 15 2016  
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY COURT OF COMMON PLEAS

Tracy Smith v. Sarah Gainey and SAVE, Inc.

CIVIL ACTION 2015-CP-10-6819

ORDER OF DISMISSAL

HONORABLE KRISTI LEE HARRINGTON PRESIDING JUDGE

Appellate Case No. 2016-001379

Tracy Smith Appellant.

V.

Sarah Gainey and SAVE Inc.

Respondent

Represented by Jack Gresh

40 Calhoun Street, Suite 550

Charleston, SC 29401

**PROOF OF SERVICE**

I certify that I have served the Appeal on Sarah Gainey and SAVE Inc. by depositing a copy of it in the United States Mail, postage prepaid on July 13, 2016 addressed to his attorney of record, Jack G. Gresh, 40 Calhoun Street, Suite 550, Charleston, SC 29401.

July 13, 2016



Tracy Smith Pro Se Plaintiff/Appellant

c/o

4351 Park Island Road

Hollywood, SC 29449

318 233 0687

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Tracy Smith, Appellant

v.

Sarah Gainey and SAVE, Inc. Respondent

**Pro Se Appellant respectfully asserts that his claims should not be dismissed because:**

- SAVE, Inc. misrepresented its services to employee/ appellant prior to any interaction with any licensee.
- SAVE, Inc. Breached its Fiduciary Duty.
- SAVE, Inc. employed Jonathon Kessler and is clearly named in the lawsuit
- SAVE, Inc. is withholding records and notes required for obtaining Expert Affidavit supposedly required by SC 15-36-100.
- Refusing to allow plaintiff to present this case to a jury of his peers is unconstitutional.
- **Save Inc.** is not a licensed Health Care Facility and is not covered by SC 15-36-100.

### **Misrepresentation by SAVE, Inc.**

SAVE, Inc. represented itself as an Employee Assistance Program and consultant for the purpose of assisting me in formulating a strategy to assist me in my duties as a valued employee not a healthcare provider. Indeed this is the role it attempted to act in evidenced by the lack of any Psychological testing administered to Plaintiff and which will be more clearly evident when the Notes and records of services are provided.

SAVE, Inc. is a corporate entity that employed Jonathon Kessler and is liable for his actions or inactions.

### **SAVE, Inc. is not a licensed health care facility and is not covered by SC 15-36-100.**

Save, Inc. is an acronym standing for **Strategies to Assist Valued Employees** and was represented as an Employee Assistance Program that could assist in constructing a Strategy to Assist me as Valued Employee.

SAVE, Inc. is not a licensed Health Care facility nor does such a facility exist at 4130 Faber Place where assistance was rendered and therefore SC Statute 15-36-100 or other statutes are not applicable to SAVE Inc.

SC Statute 15-36-100 is cited by the judge who dismissed this matter with prejudice.

A relevant excerpt from SC 15-36-100 is stated below:

*(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.*

SAVE, Inc. is not a licensed Health Care facility nor does such a facility exist at the SAVE corporate facility at 4130 Faber Place where Plaintiff consulted with corporate personnel to formulate a Strategy to Assist a Valued Employee.

**SAVE, Inc. is Withholding of records and notes required for Expert Affidavit**

Other courts have determined that a legislature cannot legally intend to give malpractice defendants the power to destroy a meritorious action by refusing to provide the very records the expert would need to prepare the affidavit.

Courts in nearby states such as NJ place burdens on the defendant to provide the documents necessary for the preparation of the affidavit by the plaintiff's expert.

I, Pro Se Appellant Tracy Smith face exactly this situation. I have repeatedly requested these records so I can obtain expert opinion/affidavit and have been repeatedly denied access to them. I respectfully assert that this matter cannot be dismissed without defendant's cooperation in providing notes and records of services rendered.

Jonathon Kessler, defendant in related matter, employed by SAVE, Inc. has also requested these records but has also been denied access to them.

I should state to the court that a hearing will be held regarding Mr. Kessler's access to these records on July 18, 2016. Pro Se Appellant Tracy Smith supports Mr. Kessler's access to these records held by SAVE, Inc. as well as his own access to these records held by SAVE, Inc.

**Refusing to hear this case would clearly deprive me, Pro Se Plaintiff/Appellant of constitutional civil right to trial by jury**

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- There are causes of action having to do with Ms. Gainey's and SAVE Inc. deceptive business practices, have nothing to do with Ms. Gainey's professional status, and are easily recognized by Lay People of the Jury without expert testimony.
- SAVE, Inc. either employed or contracted with Jonathon Kessler

Pro Se Appellant asserts that he has a Constitutional Civil Right to Trial By Jury of his peers in this matter and respectfully requests the appeal court overturn the lower court's dismissal.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Tracy Smith".

Tracy Smith, Appellant  
1510 SWARTZ FAIRBANKS RD  
MONROE, LA 71203

C/O 4351 PARK ISLAND ROAD  
HOLLYWOOD, SC 29449  
318 233 0687

Respondent

Sarah Gainey/SAVE Inc.  
Represented by Jack Gresh  
40 Calhoun Street, Suite 550  
Charleston, SC 29401  
843 720 3474

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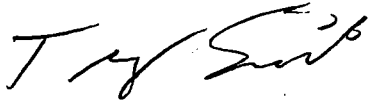
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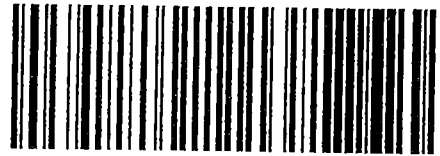
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40 Calhoun Street, Suite 550  
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843 720 3474

Tracy Smith  
4351 Park Island Rd  
Hollywood, SC 29449

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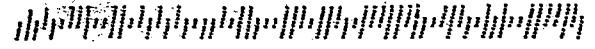
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