

to license contact: www.imgmaker.com

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge 15th Judicial Circuit

Civil Action No. 2014-CP-26-08367
2014-CP-26-03362 (formerly 2013-CP-02816)

Appellate Case No. 2016-001328

RECEIVED

DEC 13 2016

SC Court of Appeals

Gabriel Barnhill & GSB Enterprises LLC Respondents,

v.

J Floyd Swilley, J Floyd Swilley Investment
Advisors, Laurel K Swilley, SMG Partners
LLC, SMS Services LP, William C Piner,
WCP Limited LLC, 809 Holdings LP, QC
Financing LLC, Heath Causey, and Sage
Financial Group LLC, J Floyd Swilley, SMG
Partners LLC, Alicia Piner, Heath Causey,
Sage Advisory Group LP, Sage Private
Equity Group LLC, Secured Asset Factoring
Exchange, Inc, SAFE, Inc, Digics, LLC, 9-1-
1 Plumbing, LLC, and Sage Funding, LP
and Christopher Pitcock, Defendants

of whom J Floyd Swilley, Laurel K Swilley
and Heath Wendell Causey, are the Appellants.

RESPONSE TO INITIAL BRIEF OF RESPONDENTS

Heath Causey,
1705 N Oak Street Suite 2
Myrtle Beach, SC 29577
(843) 424-9258
Pro Se Appellant

TABLE OF CONTENTS

Table of Contents ii

Table of Authorities iii

Statement of Issues on Appeal1

Statement of the Case2

Arguments

Argument I3

I. BARNHILL FAILS TO ADDRESS CERTAIN ISSUES SET FORTH IN THE APPELLANTS INITIAL BRIEF THEREFORE IT IS DEEMED THAT THE RESPONDENT BARNHILL CONCURS WITH OUR POSITION AND HIS ARGUMENTS ARE ABANDONED

Argument II.....4

II. DID PROPER SERVICE OCCUR

Argument III9

III. THE TRAIL COURT DID NOT PROPERLY CALCULATE THE THIRTY DAYS OF THE ORDER

Argument IV.....11

IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY GRANTING SUMMARY JUDGMENT WHEN THERE REMAINED GENUINE ISSUES OF MATERIAL FACT IN DISPUTE

Argument V.....14

V. DID APPELLANTS PROTECT OUR RIGHT TO APPEAL AND DOES THE APPELLATE COURT HAVE THE RIGHT TO REVIEW

Conclusion15

To license contact: www.imgmaker.com

To license contact: www.imgmaker.com

TABLE OF AUTHORITIES

CASES

Baughman v. AT&T Co., 306 S.C. 101, 410 S.E.2d 537 (1991))[,] *Davis v. Parkview Apts.*, 409 S.C. 266, 281-83, 762 S.E.2d 535, 543-44 (2014) 12

Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003) 12

Faile v. South Carolina Dep't of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002) 12

Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198, 511 S.E.2d 716, 718..... 11

McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998)..... 12

Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008)..... 8

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)..... 4

Nauful v. Milligan, 258 S.C. 139, 187 S.E.2d 511 (1972) 14

Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998) 4

Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996) 11

Tate v. Oxner, 236 S.C. 313, 114 S.E.2d 225 (1960)..... 15

Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994) 14

Tryron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992) 5

Webster v. Clanton, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972)..... 5

Woods v. Rock Hill Fertilizer Co., 102 S.C. 442, 86 S.E. 817 (1915) 15

Young v. South Carolina Dep't of Corr., 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999) 12

STATUTES

SC Rules of Civil Procedure - SCRP Rule 5 5,6,8,9,15

SC Rules of Civil Procedure - SCRP Rule 50(e)..... 14

SC Rules of Civil Procedure - SCRP Rule 52 (c)..... 10,14

SC Rules of Civil Procedure - SCRP Rule 58 (a)..... 10

SC Rules of Civil Procedure - SCRP Rule 59 (f) 14

SC Rules of Civil Procedure - SCRP Rule 203(b)(1).....4

OTHER AUTHORITIES & REFERANCES

APPELLANT CAUSEY INITIAL BRIEF.....3,4,7,10,11

APPELLANT SWILLEY INITIAL BRIEF/ AMENDED INITIAL BRIEF3,4,10,11

“APPELLANT CAUSEYS MOTION TO SET ASIDE“ DEFENDANTS HEATH CAUSEY’S NOTICE OF MOTION TO SET ASIDE SUMMARY JUDGEMENT.....2,6

“APPELLANT CAUSEYS MOTION TO STRIKE RESPONSE“ DEFENDANTS HEATH CAUSEY’S NOTICE OF MOTION TO SET ASIDE SUMMARY JUDGEMENT7

“ADLER LETTER”“ LETTER FROM F. MILES ADLER TO JUDGE MCINTOSH DATED MAY 3, 2016

“ADLER EMAIL”“ EMAIL FROM F. MILES ADLER TO JUDGE MCINTOSH DATED MAY 17, 20169

“ASSISTANT HUFFMANS EMAIL” ASSISTANT HUFFMANS EMAIL TO HIS HONORABLE JUDGE MCINTOSH DATED APRIL 27, 2016 WITH ATTACHMENTS.....2,3

“ASSISTANT HUFFMANS AFFIDAVIT” ASSISTANT HUFFMANS AFFIDAVIT FILED APRIL 13, 2016 WITH ATTACHMENTS.....2,6

“ATTORNEY FATA DECEMBER LETTER” Attorney Fata in his letter to His Honorable Judge Seals of December 3, 20153

BARNHILL MEMO” PLANTIFF MEMORANDUM IN SUPPORT OF THEIR MOTION FOR JUDGEMENT ON THE PLEADINGS AND/OR SUMMARY JUDGEMENT.....6

“DECEMBER MOTION” PLANTIFF NOTICE OF MOTION AND NOTION FOR SUMMARY JUDGMENT AND FOR JUDGMENT OF THE PLEADINGS

Deposition of Joyce Kauffman12,13

Deposition of Mark Sarvis12,13

Case Docket from Lower Court.....

“FEB TRANSCRIPTS” TRANSCRIPT OF RECORD OF THE COURT HELD ON FEBRUARY 16, 201612

To license contact: www.imgmaker.com

to license contact: www.imgmaker.com

"FATA LETTER" LETTER FROM ATTORNEY NATE FATA TO HIS HONORABLE JUDGE MCINTOSH WITH ATTACHMENTS DATED MAY 13, 2016.....3,6

"FORM 4" ORDER DATED 4/26/20162,3

"JANUARY ORDER" ORDER RELEIVING JOHN M LEITER AND THE LAW OFFICES OF JON M LEITHER AS COUNCEL FOR J FLOYD SWILEY, J FLOYD SWILLEY INVESTMETN ADVISORS, LAUREL K SWILLEY, SMG PARTNERS, LLC, SMS SERVICES, LP, WILLIAMS C PINER, WCP LIMITED, LLC, ALICIA A PINER, HEATH CAUSEY, SAGE FUNDING, LP, SAGE FINANCIAL GROUP LLC, SAGE PRIVATE EQUITY GROUP, SECURED ASSET FACTORING EXCHANGE, INC DIGICS, LLC, AND CHRISTOPHER PITCOCK FILED OCTOBER 27, 20152,9,10

"NEILL EMAIL MAY 17" EMAIL FROM MARK NEILL ATTORNEY FOR 809 HOLDINGS LP TO JUDGE MCINTOSH MAY 17, 20169

"NEILL LETTER" LETTER FROM MARK NEILL ATTORNEY FOR 809 HOLDINGS LP TO JUDGE MCINTOSH MAY 19, 201613

"PLANTIFFS INTERROGATORY" Plaintiffs' Supplemental Interrogatory to Defendants dated January 11, 2016.....2,10

RESPONDENT BARNHILL'S MOTION TO STRIKE SWILLEY INITIAL BRIEF6

RESPONDENT INITIAL BRIEF3,10

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court commit reversible error by failing to abide by its own order staying the proceedings for 30 days?
- II. Did the trial court commit reversible error by ruling on the matter despite the clerk's defective service of notice? Did Proper Service Occur?
- III. Did the trial court commit reversible error by striking pleadings and granting final judgment as a sanction?
- IV. Did the trial court commit reversible error by granting summary judgment when there remained genuine issues of material fact in dispute?
- V. Did the trial court commit reversible error by relying on false statements and misrepresentations by counsel?

COUNTER STATEMENT OF ISSUES INCLUDED IN BARNHILL INITIAL BRIEF

- I. Did the Appellant properly preserve issues for Appeal?
- II. Did the Court abuse its discretion in striking Appellant's pleadings based on Appellant's repeated and well documented discovery obstruction?

STATEMENT OF THE CASE

Causey hereby restates and incorporates hereto by reference Causey's Statement of the Case from Appellant Causey's Initial Brief and Appellants Swilley Initial Brief in its entirety.

STATEMENT OF FACTS

This Appellant Causey hereby restates and incorporates hereto by reference my statement of facts from Appellants initial brief and Appellants Swilley Initial Brief in its entirety. The following additions are made to the original statement of facts as follows:

On January 11, 2016 Attorney Fata did serve to the defendants "Plaintiffs Supplemental Interrogatory to Defendants. (PLANTIFFS INTERROGATORY)" After the January Order for a 30 day Abeyance. (JANUARY ORDER) On April 6, 2016, Causey filed a Notice of Motion and Motion to Set Aside Summary Judgment. Wherein it is noted Causey asserts that prior to the hearing of February 16, 2016: "He was never notified of the hearing." (APPELLANT CAUSEYS MOTION TO SET ASIDE, Par. 2).

The Motion was filed to set aside the entire judgment due to lack of proper service and the fact that these Appellants were under a protective stay. Despite Attorney Fata statement in open court that he mailed notice to all Defendants separately (FEB TRANSCRIPTS, Page 9, line.6), The Affidavit of Sally Huffiman filed April 13, 2016, stands in marked contrast to the statement of Barnhill's Counsel wherein she only confirms service of the Notice of Hearing for the February 16, 2016 hearing to only the Company Defendants and Defendant Swilley(s) (ASSISTANT HUFFMANS AFFIDAVIT, p.2, numerical item 3.) but did not include in that same Affidavit service as to Causey. It should be further noted that the aforementioned Affidavit of Sally Human, that had been acknowledged by Notary of Attorney Nate Fata, which was filed on April 13, 2016 was not served to these defendants until May 13, 2016 some thirty (30) days after it had been filed of record giving no time of these defendants to file counter affidavit attesting to the contrary. Further it should also be noted that the Form 4 Order on the Hearing was filed

April 26, 2016 (FORM 4). One day after Attorney Fata Assistant Huffman resubmitted via email to his Honorable Judge McIntosh with the filed defendants pleading and Attorney Fata's unfiled Memorandum in Responses to Defendant's Motions with Exhibits. Interesting enough in this email, Lack of the Affidavit of Sally Huffman , this affidavit filed on April 13, 2016, the same Affidavit of Sally Huffman was not proffered to these defendants until after the Honorable Lower Court had ruled some 30 days after it was filed [ASSISTANT HUFFMANS EMAIL][FATA LETTER].

ARGUMENTS

This Appellant Causey hereby restates and incorporates hereto by reference my arguments from Appellants initial brief and Appellants Swilley Initial Brief in its entirety. The following additions are made to the original the Arguments as follows:. (APPELLANT CAUSEY INITIAL BRIEF) (APPELLANT SWILLEY AMENDED INITIAL BRIEF)

- I. **BARNHILL FAILS TO ADDRESS CERTAIN ISSUES SET FORTH IN THE APPELLANTS INITIAL BRIEF THEREFORE IT IS DEEMED THAT THE RESPONDENT BARNHILL CONCURS WITH OUR POSITION AND HIS ARGUMENTS ARE ABANDONED**

In his Initial Brief, Barnhill through Counsel fails to address the failure to advise the Honorable Court that a stay was in effect. Further he confirms the Appellants position when he notes that Attorney Lieter was relieved on January 25, 2016 (RESPONDENT INITIAL BRIEF, p. 9). If Attorney Leiter was relieved on January 25, 2016 then the Order granting the Appellants thirty days to obtain new counsel and placing the case in abeyance would have run until February 24, 2016 and the Hearing was in direct violation of the Court's own Order. Therefore the

Hearing which resulted in the Order under appeal should never had been held thus making the Order invalid.

II. DID PROPER SERVICE OCCUR?

This Appellant Causey restates, affirms and incorporates by reference all assertions set forth in his initial Brief and the Swilley's Amended Initial Brief. . (APPELLANT CAUSEY INITIAL BRIEF) (APPELLANT SWILLEY AMENDED INITIAL BRIEF)

The Honorable Court's attention is drawn Attorney Fata was in Court when this Appellant Causey's Attorney was allowed to withdraw, that Attorney Fata was well aware of 30 day time granted Appellant Causey to get an attorney, as an attorney of record Attorney Fata has duty and obligation to be aware of all contents of the record and to proceed accordingly, that the fact Attorney Fata scheduled events prior to the 30 period shows he was not aware of time restraints or that he chose to avoid, also that Attorney Fata had knowledge or reason to know this Appellant Causey was not represented by an attorney and should act accordingly. This conduct is at great disadvantage to this Appellant Causey which is magnified by lack of due and timely service of pleadings, correspondence, otherwise there could be indications of ex parte if the court involved and this Appellant Causey was not involved in or properly noticed.

"The requirements of due process include notice [and] an opportunity to be heard in a meaningful way." *Ogburn-Matthews v. Loblolly Partners*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998); *see also Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (stating that the Due Process Clause demands "notice reasonably calculated under all the

To license contact: www.imgmaker.com

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for whatever purpose it is presented and relied on. Webster v. Clanton, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972); accord Tryron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992).

As set out herein above in the Facts of the Case, the Affidavit of Sally Huffman confirms that Appellant Heath Causey did not receive proper notice of the Hearing at issue. As Barnhill's counsel, has correctly pointed out service pursuant Rule 5 is completed upon mailing all pleadings and papers (emphasis ours). In addition to failing to include Appellant Causey, the Affidavit of Huffman fails to confirm that ALL paper which would include the exhibits were mailed to the defendants. In the instant case these defendants did not timely receive the notice, moreover the Affidavit of Huffman in failing to include Causey confirms that all parties were not served therefore it would be impossible for proper service to have occurred.

Barnhill Service chose to notice on Defendants on February 3, 2016 to insure compliance with rule 5.

Rule 5 (b)(1) Service ... upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address ... Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving

To license contact: www.imgmaker.com

it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

On April 13, 2016, Barnhill filed an Affidavit of Sally Huffman, confirming service of the Notice of Hearing for the February 16, 2016 hearing on Swilley and that no mail was returned undelivered. (ASSISTANT HUFFMANS AFFIDAVIT). If we assume that Huffman's affidavit is true and correct and represents all the relevant facts of the case, then her decision to leave out a key fact, that she had also timely served Defendant Causey at his known address, we can only assume that was because it did not happen. That evidence alone should have cautioned the court and his Honorable Judge McIntosh of an error and his honor should have allowed all parties an opportunity to present arguments.

As plead in Appellant Causey Motion to Set Aside, this Appellant Causey did not receive the Notice of Hearing until after the Hearing occurred not prior to as is required by Rule 5. (APPELLANT CAUSEYS MOTION TO SET ASIDE, p. 2). If Notice is defective or improper then it is impossible for the Appellant to comply.

The Honorable Court's attention is drawn to the fact that the same Affidavit of Sally Huffman was delivered to this Appellant Causey and all other parties more than 30 days after it was presented to the lower court and ruled on. This is just another example of Barnhill and his counsel's continuing pattern of abuse of process. (FATA LETTER)

Further, the Honorable Court's attention is drawn to Respondent Barnhill's Motion to Strike Swilley's Initial Brief and specifically the attached Exhibits A&B correspondence letter as well as this Appellant's' Response to that aforementioned Motion to Strike. (RESPONDENT BARNHILL'S MOTION TO STRIKE SWILLEY INITIAL BRIEF) (APPELLANT CAUSEYS MOTION TO STRIKE RESPONSE) Appellant Causey draws his Honors attention to the fact that the Respondent Barnhill and Attorney Fata failed to serve Appellant Causey on the enclosed communications discussed within Exhibits A & B letters when Attorney Fata originally served these letters by mail to Attorney Adler. This is just another example of Barnhill and his attorney engaging in ex parte communications, Opposing Counsel is required to provide a copy to all parties to the case all communications between himself and another party of the case.

Further, the Honorable Court's attention is drawn that on page 11 of this Appellant Causey's Initial Brief Appellant Causey adopted and incorporated by reference the entire brief of the Swilley(s): (APPELLANT CAUSEY INITIAL BRIEF)

...“This Appellant [Causey] references the entire Brief of the Swilleys' and asserts the same arguments and assertions as his own unless specifically identified within this brief.”...

Therefore, it was incumbent upon the Respondent to include a copy of any and all correspondence including but not limited to communication by and between himself and the courts or other parties or their counsel. As set out herein, this has not occurred.

The Respondent has argued that this Appellant Causey knew or should have known the time and date of the scheduled hearing because Attorney Neilll, who represented this Appellant Causey in another matter, and the Swilley's were noticed. This is tantamount to an admission that he failed to notice this Appellant Causey. Such assertion is buttressed by the Affidavit of

Respondents own paralegal Ms, Huffman who fails to include this Appellant Causey in her affidavit and therefore confirms this Appellant Causey was not included. If this Appellant Causey by the Respondents own admission, was not included in the service it would have been impossible for proper service to have occurred pursuant Rule 5 and the Respondents argument fails based upon their own admission. This is echoed in the findings of the South Carolina Supreme Court wherein it frequently notes:

“[p]rocedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” Moore v. Moore, 376 S.C. 467, 657 S.E.2d 743 (2008).

If the Respondent fails to comply with the rules of the Appellant Court it reasonably follows that he would fail to adhere to the rules of the lower courts if they prevented an impairment to him taking advantage of an unrepresented party. The fact that the Respondent has admitted that this Appellant Causey was not given proper notice confirms that his due process rights were violated by not allowing him to have his day in court and should result in the Order being set aside.

This Appellant Causey would further argue that Attorney Fata's pattern to not include this appellant on any service of process lists, that by doing so Attorney Fata left the Appellant Causey out of the picture and that Attorney Fata had as much of duty if not more to advise this Appellant Causey of the status of the case and what was going on because this Appellant was proceeding pro se.....the demonstrates conscious disregard for Civil Rule 5 which sets out service of process....if Attorney Fata was up on the record he would know that no attorney had entered appearance on behalf of Defendant / Appellant Heath Causey so this appellant Causey as an individual had to be given proper notice individually and timely otherwise it looks like what it

is ... Attorney Fata is trying to get around the rules and ignoring this Appellant Causey's position... Attorney Fata was in court, was aware counsel had withdrawn, was aware or should have been aware no one had entered an appearance on behalf of this Appellant Causey, therefore this Appellant Causey is entitled to same notice on all pleadings, correspondence, communications as any other party and all other due process. Barnhill's claims of un- timely filed arguments should carry little weight where there is a question of proper service and evidenced continued pattern of improper service abuse under Rule 5, further Barnhill should not be allowed to profit by denying this Appellant Causey's opportunity to be heard in a meaningful way.

This Appellant Causey would further argue that the lower court aided in these patterns of improper service when the lower court only contacting Attorney Fata by sending him the Form 4 and not to the other parties, This Appellant Causey, including Attorney Neill and Attorney Adler who had filed a notice of appearance and should have been copied on all communication. This Appellant, Attorney's Neill & Adler were not, as atestified by their emails (ADLER EMAIL), & (NEILL EMAIL MAY 17).

With a pattern of these flagrant disregards for the rules by the Respondent, this Appellant Causey could not have been and was not given proper notice and confirms that his due process rights were violated by not allowing him to have his day in court and should result in the Order being set aside.

III. THE TRAIL COURT DID NOT PROPERLY CALCULATE THE THIRTY DAYS OF THE JANUARY ORDER.

This Appellant Causey restates, affirms and incorporates by reference all assertions set forth in his initial Brief and the Swilley's Amended Initial Brief. . (APPELLANT CAUSEY INITIAL BRIEF) (APPELLANT SWILLEY AMENDED INITIAL BRIEF)

The Respondent has argued Attorney Leiter was relieved as counsel for this Appellant Causey by means of an Order [*JANUARY ORDER*] entered on January 25, 2016. It is well held that an Order becomes effective on the date it is clocked with the Clerk. In fact, this is set out in Rule 58(a) (SCRCP Rule 58(a)). Through his admission that the Order was not entered until January 25, 2016 (Respondents Initial Brief, p.9). The Trial Judge, His Honor Judge Seals, ordered that the Appellants be given thirty days to obtain counsel from "the date of this Order", inter alia, to assure the parties were represented and to assure that they were not taken advantage of by opposing counsel while not being represented. The Order was entered on January 25, 2016 as admitted by the Respondent. The Respondent also admits that the Appellants were to have 30 days from the date of the Order. Rule 58(a) directs that the Order date is the entry date. Therefore the Appellants including this Appellant Causey were under a protective order and the Hearing which resulted in the March Order was under appeal, was improper, and should not have been held. As a result the Appellants rights have been violated and the Entire March Order should be reversed.

This Appellant Causey respectfully draws to his honors attention to the fact that Attorney Fata was in court when Attorney Leiter was allowed to withdraw, Attorney Fata was well aware of the 30 day time of Abeyance from the date of the January Order. Attorney Fata was aware; Attorney Leiter submitted the order to the Honorable Judge Seals on January 5, 2016 Defendants was served on January 11, 2016. (PLANTIFFS INTERROGATORY) If Attorney (RESPONDENT INITIAL BRIEF P 3/ Page 9). Plaintiff's Supplemental Interrogatory to Fata,

To license contact: www.imgmaker.com

as he asserts believed that the Order of Abeyance began with the Judge's signature, why then would he knowingly and willingly file notices or other documents in direct contempt of that Order? In direct contrast to his stated position, Attorney Fata's own actions confirm his knowledge the order was not in effect and the January Order would not effective until it was signed, and clocked in court. Surely, Attorney Fata would not just ignore His Honorable Judge Seal's order completely and attempt to use the ambiguities in the language to his advantage especially when such action would be taking advantage of unrepresented parties.

IV. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY GRANTING SUMMARY JUDGMENT WHEN THERE REMAINED GENUINE ISSUES OF MATERIAL FACT IN DISPUTE

In direct response to the Respondent, this Appellant Causey hereby restates and incorporates by reference the assertions stated in his Initial Brief and the Appellant Swilley's Initial Brief. (APPELLANT CAUSEY INITIAL BRIEF) (APPELLANT SWILLEY AMENDED INITIAL BRIEF)

The Respondent argues that the lower court exercised sound discretion in striking this Appellant Causey's Pleadings. However, it is well held that:

"When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999) (citing *Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996)). Thus, "[w]here the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." *Id.* at

To license contact: www.imgmaker.com

198-199, 511 S.E.2d at 718-19 (citing *Baughman v. AT&T Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991))].] *Davis v. Parkview Apts.*, 409 S.C. 266, 281-83, 762 S.E.2d 535, 543-44 (2014).

In the instant case, there was no factual basis to support the decision to impose the ultimate sanction penalty of striking the Swilleys' pleadings and then granting final judgment in favor of Barnhill. The Respondent has stated in open court at the hearing that: "...I [Attorney Fata] know nothing about with no information,[Attorney Fata] have no depositions yet..." (FEB TRANSCRIPTS, p.8, ln20). "...I [Attorney Fata]got two months to get ready for trial and I've got you knownothing..." (Id., p.17)

While Attorney Fata's statements are not factually accurate about having no depositions, the record clearly shows that depositions of Mark Sarvis and Joyce Kauffman had already been taken (Deposition of Joyce Kauffman/Deposition of Mark Sarvis), he is however accurate about the very limited proof having been taken on and provided by the plaintiffs/ Respondents side. The Defendants have produced numerous records that will be produced upon request due to the voluminous nature. This Appellant Causey upon request of this honorable court will provide a listing of those exhibits and approximate pages, the defendant produced discovery currently count for no less than 3 Banker Boxes. Our Honorable Courts have consistently held that Summary Judgment is not appropriate if there are any triable issues:

In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Cunningham v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003); *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.F.2d 536 (2002);

McNair v. Rainsford, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998). If triable issues exist, those issues must go to the jury. Young v. South Carolina Dep't of Corr., 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999).

The parties on both sides had rescheduled depositions by agreement. Attorney Neill's letter reiterates this point:

"...Depositions was canceled in advance by agreement of plaintiffs attorney as a result of attorney John Leiter's Motion to be relieved. The Parties agreed that depositions would be rescheduled after the motion to be relieved was heard..."

"... Mr. [Attorney] Fata never re-noticed the depositions....." ("NEILL LETTER"- Attorney Neill letter to His Honorable Judge McIntosh, May 19, 2016.)

This agreement is further confirmed by Attorney Fata in his letter to His Honorable Judge Seals of December 3, 2015 wherein he acknowledges that no depositions would occur until after the Motion to Relieve Attorney Leiter as counsel. (Attorney Fata Letter to His Honorable Judge Seal, December 3, 2015) "From my [Attorney Fata] conversations with Mr Leiter, no depositions will take place until Mr Leiter's [Attorney Leiter] motion is heard."

The decision to apply the Summary Judgment was not based upon triable issues but rather Attorney Fata's questionable comments to his Honorable Judge McIntire that we, The Appellant Causey and Appellant Swilleys, refused to participate in discovery; were the main reason for all the Judgments as well as 809 Holdings Counsel Fiedler's misstatements (FEB TRANSCRIPTS). The invalidity of Attorney Fielder's comments was confirmed in Attorney Neill's letter to His Honorable Judge McIntosh.

The misrepresentations of Attorney Feidler and inflammatory statements of Attorney Fata served to prejudice the Appellants. The SC Supreme Court has held that “even in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice.” *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994).

The Honorable Court’s attention is drawn to the fact that here have been multiple discovery documents and amendments to interrogatories tendered to the Respondent and said counsel. These are voluminous in nature and too many to add to the record on their own. At a minimum of three banker boxes, two depositions of Mark Sarvis and Joyce Kauffman have been completed. Further upon request this Appellant Causey will provide a list of the Documents and an approximate page number should his honor request them.

The case is ripe with triable issues that could not have been resolved absent additional discovery including depositions. This is confirmed by the evidence of record cited herein. Therefore the harsh sanction of summary judgment was not within the sound discretion of the lower court. As such the Order should be reversed and the case remanded for trial.

V. DID APPELLANTS PROTECT OUR RIGHT TO APPEAL AND DOES THE APPELLATE COURT HAVE THE RIGHT TO REVIEW?

[A]n order granting summary judgment, even a partial one, is appealable. *Naufal v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972).

A timely post-trial motion, including a motion to alter or amend the judgment stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such motion. See Rule 203(b)(1), SCACR; Rules 50(e), 52(c), Rule 59(e) and 59(f),

To license contact: www.imgmaker.com

SCRCP. a timely filed post-trial motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments. A post-trial motion has long has been viewed as “motion for reconsideration” despite the absence of those words from the rule. Basically it was been interpreted to as equivalent to an Notice of Intent to Appeal and thus stayed the time for an appeal.

Barnhill assertions of un- timely filed arguments should carry little weight when there is a continued pattern of improper service abuse under Rule 5.

The South Carolina Supreme Court has for years held that it has the discretion to review an entire order if the order contains an appealable issue. E.g., Tate v. Oxner, 236 S.C. 313, 114 S.E.2d 225 (1960); Woods v. Rock Hill Fertilizer Co., 102 S.C. 442, 86 S.E. 817 (1915).

CONCLUSION

In light of the foregoing arguments and authorities cited, it is clear that the trial court committed multiple errors, any one of which requires reversal.

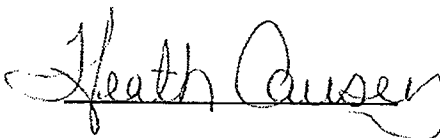
WHEREFORE, This Appellant Heath Causey respectfully requests and prays that this Honorable Court:

- A. Reverse the trial court's order entered March 21, 2016, striking the Heath Causey pleadings and granting Barnhill summary judgment;
- B. Reverse the trial court's order entered May 25, 2016, denying Heath Causey's motion to set aside the March 21, 2016 order;
- C. Remand the case for further proceedings; and

To license contact: www.imgmaker.com

D. Grant Appellant Heath Causey any other and further relief the Court deems just and equitable including court filing fees.

Respectfully submitted,



Heath W Causey, Pro Se Appellant
1705 N Oak Street Suite 2
Myrtle Beach, SC 29577
Cell phone. 843-424-9258
heath.causey@mac.com
Pro Se Appellant

To license contact: www.imgmaker.com

to license contact: www.imgmaker.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
R. Lawton McIntosh, Circuit Court Judge 15th Judicial Circuit

RECEIVED

Civil Action No. 2014-CP-26-08367
2014-CP-26-03362 (formerly 2013-CP-02816)

16
of Appeals

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC

Respondents,

v.

RECEIVED

J Floyd Swilley, J Floyd Swilley
Investment Advisors, Laurel K Swilley,
SMG Partners LLC, SMS Services LP,
William C Piner, WCP Limited LLC, 809
Holdings LP, QC Financing LLC, Heath
Causey, and Sage Financial Group LLC, J
Floyd Swilley, SMG Partners LLC, Alicia
Piner, Heath Causey, Sage Advisory
Group LP, Sage Private Equity Group
LLC, Secured Asset Factoring Exchange,
Inc, SAFE, Inc, Digics, LLC, 9-1-1
Plumbing, LLC, and Sage Funding, LP
and Christopher Pitcock,

DEC 13 2016
SC Court of Appeals

Defendants

RECEIVED

of whom J Floyd Swilley, Laurel K Swilley
and Heath Wendell Causey, are the

Appellants.

DEC 13 2016
SC Court of Appeals

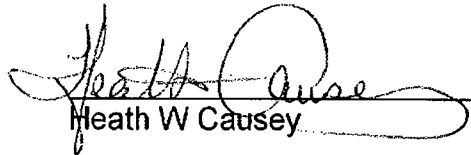
PROOF OF SERVICE

I certify that I have served the Reply Brief and Amended Designation of Matter by Appellant Heath W Causey by depositing a copy of it in the United States mail, postage prepaid, on December 13, 2016 addressed to the following:

Counsel of Record:

Nate Fata, PA
P.O. Box 16620
Surfside Beach, SC 29587
Attorney for Respondents

F. Miles Adler
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawley's Island, SC 29585
Attorney for Appellants "Swilleys"


Heath W Causey

to license contact: www.imgmaker.com

Heath W. Causey
1705 N Oak Street Suite 2
Myrtle Beach, SC 29577

RECEIVED

DEC 13 2016

SC Court of Appeals

December 13, 2016

VIA USPS PRIORITY MAIL

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

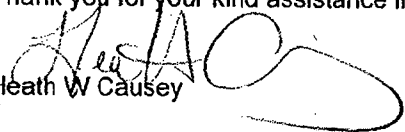
Re: Gabriel Barnhill and GSB Enterprises, LLC v J. Floyd Swilley at al.
Case No.: 2014-CP-26-08367 Appellate Case No.: 2016 -001328

Dear Ms. Kitchings,

Enclosed for filing the original Reply Brief and Amended Designation of Matter in the above referenced matter. I have also attached a proof of service. Also per our phone conversation last time there is the no filing fee.

Please return a filed copy to me in the enclosed self-addressed stamped envelope.

Thank you for your kind assistance in this matter


Heath W Causey

CC: Nate Fata
F. Miles Adler, Esq

FAX COVER SHEET

To: Jenny Abbott Kitchings

From: Heath Causey

Company: CLerk of Court

Company: Clear Accounting

Fax: (803)734-1839

Phone: 843-536-0343

Date: 12/13/2016

Pages w/cover: 29

Subject:

to ensure compliance this has been fax to the office the original will arrive via

Comments:

per Rule 262(a) (2) I am filing this duplicate to insure we make the deadline. An electronically transmitted facsimile copy of a document may be accepted for filing; however, an original of the document must be immediately sent by U.S. mail to the clerk.

RECEIVED
DEC 13 2016
SC Court of Appeals