

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Appellate Case Number 2015-000940

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JAN 11 2017

SC Court of Appeals

D.A. Morgan Price.....Respondent,

v.

Todd Chas, Jacara Chas, Marsh Winds Owners Association, Inc. a/k/a Marsh Winds
Horizontal Property Regime, and the Marshland Communities, LLC, Defendants,

Of whom Todd Chas and Jacara Chas are the Appellants.

APPELLANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Jeffrey S. Tibbals
Alexandra H. Austin
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

Attorneys for Appellants

January 9, 2017

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rule 240 of the South Carolina Rules of Appellate Procedure, Appellants, Todd Chas and Jacara Chas, hereby respectfully move this Court for leave to file a Supplemental Brief in the above-captioned matter. Appellants state the following in support thereof:

1. The above-captioned matter is before this Court on appeal from a default judgment in the Circuit Court.
2. In the Circuit Court, Appellants maintained that the judgment is void for lack of due process and lack of personal jurisdiction in their Motion to Set Aside Judgment brought pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure, (R. pp. 61-68), and again in their Motion for Reconsideration brought pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, (R. pp. 204-07). In both instances, Judge Harrington issued Form 4 Orders denying the Motions.
3. Appellants' Brief and Reply Brief, while touching upon these issues, did not address and discuss them in a comprehensive manner. This Court should fully consider due process and personal jurisdiction, given the magnitude of these fundamental rights, and may exercise its discretion to grant Appellants' Motion.
4. The issue of whether the judgment must be held void because the Circuit Court lacked personal jurisdiction over Appellants is of substantial importance, as it goes to questions of fundamental fairness and justice and, as such, ought to be fully considered by this Court with the benefit of substantive and in-depth briefing. See Hospitality Management Associates, Inc. v. Shell Oil Co., 356 S.C. 644, 659, 591 S.E.2d 611, 619 (2004)


(explaining in the context of personal jurisdiction that “there is the fundamental interest in not allowing constitutionally infirm judgments to be enforced”).

5. Beyond the issue of jurisdiction, this Court and the South Carolina Supreme Court routinely recognize that, whenever possible, a case should be decided on the merits. See, e.g., Micronics, Inc. v. S.C. Dep’t of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (holding that South Carolina policy favors “the disposition of issues on their merits rather than on technicalities”).
6. The substantive issue of whether the judgment is void for lack of due process is also of particular importance because it bears upon Appellants’ fundamental and substantial rights. Therefore, in the interests of fairness and justice, the due process issue should also be fully considered by this Court with the benefit of more in-depth analysis in a supplemental briefing. See Kurschner v. City of Camden Planning Comm’n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) (holding that “[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review.”).
7. Moreover, new (albeit non-binding) authority from the United States District Court for the District of South Carolina bears upon the issue of whether Appellants’ due process rights were violated. In Hyman v. South Carolina Dep’t of Corrections, the district court held that “[i]t would offend the basic principles of due process to direct one defendant to accept service for another defendant.” No. 4:13-cv-3523-MGL-TER, 2016 WL 4055672, at *2 (D.S.C. June 15, 2016). This decision relates directly to the issue of Appellants’

due process rights because the Affidavit of Non-Service of the Summons and Complaint was prepared and submitted only for one Appellant, but not both. (R. pp. 74-75).

8. Appellants have suffered substantial prejudice as a result of the violation of their due process rights. This prejudice would be compounded if these issues were not to receive full consideration by this Court. Accordingly, Appellants seek leave to file a supplemental brief for the limited purposes of more fully developing the arguments raised below that the default judgment is void for lack of personal jurisdiction and lack of due process. Should the Court grant Appellants' Motion, Appellants are prepared to file their Supplemental Brief expediently (within ten days).

Respectfully Submitted,



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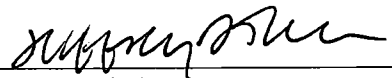
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Horizontal Property Regime, and the Marshland Communities, LLC, Defendants,

Of whom Todd Chas and Jacara Chas are the Appellants.

PROOF OF SERVICE

I, Jeffrey S. Tibbals, Esquire, hereby certify that on the 9th day of January, 2017, I
served a copy of APPELLANTS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL
BRIEF, submitted by Appellants Todd Chas and Jacara Chas, upon counsel for Respondent
via United States Mail, postage prepaid, and addressed as follows:

Andrew S. Radeker
Harrison & Radeker, P.A.
P.O. Box 50143
Columbia, South Carolina 29250



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January 9, 2017

Jeffrey S. Tibbals
Member
Admitted in MD, VA, DC, SC

January 9, 2017

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SC Court of Appeals

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

Re: *D.A. Morgan Price v. Todd Chas, Jacara Chas, et al.*
Appellate Case No. 2015-000940

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellants' Motion for Leave to File Supplemental Brief in the above-referenced matter. Also enclosed is this firm's check in the amount of \$25.00 to cover the applicable motion filing fee. Please file the original and return the file-stamped copy in the enclosed, postage-paid envelope.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

By copy of this letter, I have served counsel for Respondent, as indicated in the Proof of Service.

Sincerely;



Jeffrey S. Tibbals

JST/ksh

Enclosures

cc: Andrew S. Radeker

Hasler

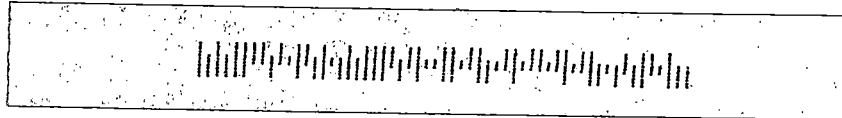
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