

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
9th Circuit Court of Common Pleas
R. Markley Dennis, Circuit Court Judge

Case No. 2013-CP-10-6019
Appeal, 2016-001035

RECEIVED

JAN 13 2017

SC Court of Appeals

Jack Powell, Appellant,

v.

Knology of Charleston Inc. Respondent,

Appellants Response to the Respondents Return
in Opposition to Motion for Relief of Judgment

Pro se Appellant Jack Powell responds to Respondents Return In Opposition to Motion for Relief of Judgment, because he feels the Honorable Court of Appeals would easily recognize the obvious mistakes made by Judge Dennis before, during and after the MSJ hearing. Also would recognize the E-mail in new evidence submitted by Respondent that proved Knology Inc. owned the 2 unburied cable line and the Court would easily recognize the Respondent falsely accused the Pro se of submitting allegedly fabricated materials about Knology's Operation Manager. Also accused Pro se Mr. Powell of telling untruths about his conversations with Judge Markley Dennis & Mcangus, Goudelock &

Courie Attorney Benjamin Davis which was improper and furthermore lacked merit.

Also the Appellants response denies the accusation he used improper language when describing the facts during these unusual circumstances with Attorney Davis and Judge Dennis, while the Pro se wasn't permitted to receive the Defendants memorandum in support for summary judgment before the MSJ hearing. The Appellant also responds to the Respondents intentionally hidden E-mail that the Pro se discovered after the Order was signed.

Furthermore, the Appellant feels this Appeal is a waste of the Appellate Courts time and this case would better served back in the Lower Court since the first legitimate ongoing issue of dispute was and still is the granting of summary judgment when there was an inadequate disclosure of discovery, that was caused by Judge Dennis's mistakes. Also, an improper procedure was allowed by Judge Dennis concerning the Defendants memorandum in support for motion for summary judgment that allowed the introduction of new evidence and therefore the Pro se was denied his right to argue his response and use their new evidence to prove 100% the 2 unburied cable lines belonged to Knology of Charleston Inc.

First, Attorney Helen Hiser states on page 1. a party can apply to the Court of Appeals for leave to file a motion for relief from judgment with the Circuit Court Rule 60 (b), SCRCF. However, it is improper for Appellant to file a motion asking this court to grant him the same relief he is seeking on appeal. In reality, his motion is nothing more

than an attempt to avoid the appellate process and obtain a substantive ruling from the Court via his motion.

Pro se has also read 60 (b) and however he did not read where it is improper for him to file a motion asking this court to grant the Pro se the same relief he is seeking on appeal. Therefore, the Appellants motion isn't improper, because the appeal and motion for relief is about the same case and history which included the discovery of new evidence after the MSJ hearing.

Furthermore, the Pro se filed his motion for relief because of multiple mistakes, inadvertence, excusable neglect, extrinsic fraud, misrepresentation, misconduct by an opposing attorney. Therefore, the evidence and circumstances hasn't changed, except the Appellant discovered new evidence. Again, Mr. Powell feels this Appeal is a waste of time for the Court of Appeals, because the Court will easily recognize the multiple and obvious mistakes made by Judge Dennis that enabled the Respondent to gain advantage over the Pro se and be improperly granted summary judgment. See Appellants Initial Brief p. 13., 16.

Attorney Hiser stated Pro se was trying to circumvent normal appellant process when actually according to Rule 240 where it states may be deemed consent by that party to the relief sought in the motion. The Appellant submits he should not be sanctioned for making these statements that coincided with the facts and circumstances that were in fact truthful and relevant. Also the Pro se is confident if some specific wording describing the

events and the individuals manner were removed from the Appellants Initial Brief, it wouldn't determine the outcome of the motion and appeal, because the remaining facts will still be the same. This is why the Appellant did not respond to the Respondents motion to strike portions of his initial brief, because Pro se felt the Honorable Court of Appeals would see that his statements were acceptable pursuant Rule 60. Therefore, the at the most the motion should only remove words that described attitudes and not the genuine disputes and facts about the improper procedures, decisions and hearings when the statements speak for themselves.

Attorney Hiser states these are unsubstantiated attacks. The Appellant submits the facts and evidence supported by the Transcript exposes the mistakes, intentional tactics and manner by Judge Dennis & Attorney Davis. Appellant submits this response will prove to the Honorable Court that the Attorney Hiser has tried to confuse the court by submitting unsubstantiated attacks towards the Pro se that proves there are still relevant unresponded discovery issues and genuine disputes caused by the improper procedures that took place from 7-30-14 to 4-2-15. The actual facts were revealed within the Pro se's Relief and this response, so the granted summary judgment was premature and this case should be returned to the lower court, because it is obvious that Mr. Powell was denied his right to recover the preponderance of discovery that he first compelled on 7-30-14 with Judge Dennis presiding and then he ordered the Plaintiff to be specific about his request and he did properly supplement his request again. See App. Initial Brief p. 10-12.,

10-14., p. 14., 19-20., p. 15-20., 22-32., p. 24., 42-43., p. 25., 46-47., p. 29., 55 thru page 31., p. 33., 59-60., p. 35., 64., p. 39. 16. and p. 40.

Furthermore, Appellant is sure the Honorable Court of Appeals will recognize these mistakes by the Lower Court that allowed the Defendant to intentionally evade the responses that were also ordered to be supplemented 10 days before the MSJ hearing on 4-2-15. See **Appellants Motion for Relief of Judgment Tran Exh I.** p. 6, 7. thru p. 10, 5. Also the **Appellants Initial Brief Attachment A, Transcript p. 2, L. 10-22** and Exh. F. These evasive tactics rendered the Pro se without any production of documents about procedures and laws to follow and the facts that would reveal their ownership of the lines which was the major issue of dispute. Therefore, the Pro se was denied his right to a fair and impartial hearing because of the Jason Tant E-mail that wasn't produced properly.

Second, Attorney Hiser states "Appellant wasn't denied a fair and adequate opportunity to engage in discovery." The Pro se again submits he wasn't allowed a fair opportunity to engage in discovery, because the dispute was and still is their evasive responses that were allowed by Judge Dennis. Judge Dennis made a mistake when he allowed the Defendant to evade answering production request no. 4 on pp. 33 of the Appellants Relief of Judgment, that would have included the E-mail from Knology Inc. Operations Manager Jason Tant that proved one hundred percent that Knology owned the 2 unbundled cable lines and this was the main genuine dispute during the 2 MSJ hearings on 4-2-15. Furthermore, if the Plaintiff had received this E-mail 10 days earlier pursuant

discovery rules, Pro se would have been able to submit this E-mail that was hidden and evaded during the Judge Dennis ordered supplemental production request during the MSJ motions on 4-2-12. See Discovery issue in App. Relief **Exh I, Tran p. 7-11.** & Exh. H also Exh. F. of the Appellants Initial Brief and pp. 18., 29.

Therefore, if Judge Dennis hadn't made a mistake with the discovery procedures the Plaintiff would have been able to submit the E-mail during the Plaintiffs second MSJ hearing as he had planned, just minutes before the Defendants MSJ and then the Plaintiff would have been granted Summary Judgment with this proof. But, instead Plaintiff had to submit he didn't receive the ordered supplemental request and this was a genuine dispute before, during and after the MSJ. See the Appellants Motion for Relief p. 2, 5. thru p. 3 & p. 7, 23. thru 24-25., 23-26, 28, 43, 44, 46, 51, 59, 62, 66, 69, 71, 76, 87, 88 and 90 which was also referencing the newly discovered Jason Tant E-mail. App. Initial Brief, Exh. F

Also, if Judge Dennis hadn't of made the same mistake with all of the ordered supplemental request, the Defendant would have had to admit the two lines were theirs and Pro se would have already been granted summary judgment just minutes before the Defendants MSJ hearing. Also, Plaintiff could have submitted the E-mail to Judge Dennis during Defendants MSJ hearing when Judge Dennis asked Mr. Powell "what proof do you have that Knology is the person that put in this work, that installed the cables that caused the fall?" Relief **Tran. Exh I., p. 16,** 1-10, also in Pro se Appellants Initial Brief p. 41, 87. which was the major dispute during the 3 MSJ hearings. Again, Pro se could

have submitted his new E-mail as 100% proof of ownership if he hadn't been denied his procedural right to receive discovery which was far from complete and the Depositions had not been deposed. Therefore, this granting of summary judgment by Judge Dennis was premature. See Respondents motion to strike portions of Appellants initial brief Attachment **Exh. A. Tran p. 4**, L. 1-17.

Therefore, Pro se Appellant was given minimal opportunities and Judge Dennis failed with his judgements when he didn't allow the Pro se to receive the memorandum in support for motion for summary judgment and he also interrupted Mr. Powell many times and changed the subject and didn't give the Plaintiff a reasonable opportunity to argue his positions. See the Appellants Relief of Judgment p. 12, 32-33, pp. 15, 37-39., pp. 16, 41., p. 17, 42 - 43., p. 18., 45 - 46., p. 19., 47., p. 20., 49., p. 22, 54., p. 24., 59. p. 25, 60 - 62, p. 26, 63., p. 34, 74., p. 35, 76 - 78., p. 37, 79. & 80., p. 38, 72., p. 39, 85., p. 40, 87. & 88., and p. 41, 88.

Plaintiff had argued to Judge Dennis during the Plaintiffs second MSJ hearing, Relief **Exh. I, Tran. p. 3-6**, discovery dispute and about 5 minutes later after Defendants MSJ hearing began **Exh. I, Tran p. 6-10**, Plaintiff was arguing what he had done since the Plaintiff's compelled hearing on 7-30-14 and this was the issue of dispute before this MSJ hearing and during, because of Judge Dennis's Inadvertence on 4-2-15 and is now the same dispute before the Appellate Court, because the Plaintiff was denied his right to receive the relevant evidence from discovery that was originally compelled and then the

Judge Dennis ordered supplemental production & admit requests that the Defendant never answered even after being discussed multiple times during this MSJ hearing.

Judge Dennis erred because of his Inadvertence when he failed to understand what had progressed during these requests for discovery and during this MSJ hearing. The Appellant was correct when stating the hearing was premature and he also submits he feels the Court of Appeals would recognize that the Pro se was treated unfairly and he wasn't given an adequate opportunity to engage in discovery and that this case should be sent back to the Lower Court, because the Pro se never received the production requested. Also, the language used was appropriate considering what the circumstances were when describing Judge Dennis and Attorney Benjamin Davis, because the Pro se hasn't seen any other legal terms under Rule 60 that would properly describe their actions. See App. Initial Brief pp. 14., 19-20., pp. 15-18., 23-30.

Third, it states Appellant is improper because he continues to rely on non-record material. The Pro se repeatedly described these circumstances that could have been easily proven to be fabrications or untruthful statements, if they had been. Furthermore the Respondent and Judge Dennis chose not to, because these were correctly described by Mr. Powell and unfortunately the Pro se now has to submit the Respondent is entering non-record materials when stating these are alleged statements, alleged telephone conversations, alleged conversations in the hallway with defense council, an alleged E-mail from someone named Jason Tant were fabrications. Respondent states to begin

with, the authenticity of the E-mail is suspect. It is unclear whether this purported E-mail has been fabricated or if truly from a Knology employee, whether it has been altered in any way. Appellant merely describes it as from his own electronically stored information (Motion p. 45) but provides no information regarding its origin or authenticity.

Therefore the Pro se submits Attorney Hiser has made untruthful & inflammatory statements to the Honorable Court of Appeals, because she knows for a fact that Jason Tant is the Charleston Operations Manager for Knology and also Kayla Droney in the E-mail was the Charleston Marketing Director. Furthermore, she opened the door for the Pro se to submit evidence that the newly found E-mail does meet the standard for admitting after-acquired evidence. See App Initial Brief Exh. F

Respondent submitted in their motion to strike portions of Appellants brief on p. 1, para 2 where it states "Specifically, Appellant refers to alleged statements made by Judge Dennis in an "MSJ hearing on 7-30-14" (Initial Br. P. 10, 9., p. 13, 17., p. 15, 21.) however, the transcript of July 30, 2014 hearing in this case on that date does not reveal any such statement.

Unfortunately, Respondent tries to convince the Court of Appeal Judge Dennis's statement and his attitude of bias didn't take place and furthermore, the Pro se Appellant submits the Respondent has opened the door for the truthful facts to be submitted when Attorney Hiser stated on p. 2. para 3. of the Respondents Return in Opposition to Motion for Relief; "The alleged statements and conversations should be stricken because there is

no evidence to substantiate Appellants version of them.” Furthermore the Respondent knows why this statement “I’d laugh at you too” wasn’t on their Transcript. It was because the statement was made during another motion on 7-30-14 and Attorney Davis was present when the statement was made. Attorney Hiser knew why it wasn’t on their Transcript and she made these statements even though she knew they weren’t true and she was also pursuing the same improper tactics the Pro se was arguing against in his motions and Initial Brief which are also genuine disputes.

See **Appellants Response Exh. A**, p. 5, L. 16 thru p. 6, L. 11. where Judge Dennis insults Pro se by stating during the hearings on 7-30-14, case 2013-CP-10-5351 “I’d laugh at you too” and then he tries to cover up his insult by stating “I’d laugh with you” when there was not one person in the court room including Attorney Davis that believed Judge Dennis meant what he said about laughing with Mr. Powell, because of the tone of his voice and manner. See also Plaintiffs Motion to Recuse p. 4, 15. and including Mr. Powell’s complaint to the South Carolina Disciplinary Board about multiple displays of bias beginning on page 5, last paragraph.

Respondent accused Appellant of making the alleged statement about Judge Dennis. Therefore, Judge Dennis had been inconsistent with his understanding of the procedures and rulings with the Pro se and this is proven when he allowed Defendant in this case to proceed improperly with their memorandum in support of summary judgment after intentionally failing to deliver a copy to Mr. Powell in the hallway or in Judge

Dennis's chambers. Attorney Davis had apparently mailed Judge Dennis one or hand delivered him one that day, which was an improper evasive tactic that occurred the day before this MSJ hearing on 4-2-15.

Exh. I Tran. p. 7. L. 4 thru p. 8. is where Plaintiff submits Defendants production was returned in the hallway and also, **Exh. I Tran p. 11,** L. 17 thru p. 12 where Attorney Davis never denied or submitted this was an untruth statement about what took place in the hallway. The Defendant never submitted any form of denial of this conversation until now. Also, if his return in the hallway was sufficient, then why was Defendant ordered to submit a supplemental response to their Production and Admissions? See Respondents Motion to Strike **Attach. A, Tran. p. 2,** L.10-21.

On 4-1-15 in the hallway, Attorney Davis responded to Pro se that he had put his memorandum in the mail that morning and after walking into Judge Dennis's chambers Mr. Powell made a complaint to Judge Dennis in front of his female assistant and attorney Ben Davis. Then Judge Dennis made this statement in front of all three that "it's no big deal because it's just the same issues." Also this was an accusation that was conveniently made by Attorney Hiser, instead of Attorney Benjamin Davis who was the only witness in the hallway when he notified the Plaintiff about his mailing of their memorandum and he was present when Judge Dennis gave his flawed opinion about the Defendants undelivered memorandum before he had read it, because if he had read it he would have realized there was a new photo and argument submitted.

See Plaintiffs Motion to Recuse Exh. A, p. 7, para. 3-6 of the Plaintiffs

Supplemental Incident Added to Complaint. The Appellant is not smart enough to submit untruths and accusations about a Judge and then expect to convince the Court he was truthful. Also the Respondent's Attorney's could have then and even now requested a statement from Judge Dennis and his assistant that there never was a complaint made by the Pro se about their memorandum. Also, Judge Dennis never stated that Mr. Powell's statements about him were untruthful in his Order or at any other time and the reason the Respondents Attorney Hiser made these accusations instead of Attorney Davis was because he doesn't want to go on the record as making these untruthful accusations. See the Appellants Initial Brief p. 12, 15-17., "no big deal." Also see the Appellants Relief of Judgment p. 14, 35 & 36.

These accusations are proof this response is purely a desperate act to convince the Court of Appeals that Judge Dennis had not made mistakes when he allowed Attorney Davis to not properly deliver a copy of their memorandum to Mr. Powell and also when Judge Dennis allowed them to engage and succeed with their evasive & improper tactics by avoiding responding to his ordered supplemental Production and Admissions request that was originally compelled on 7-30-14 and were supposed to be answered & produced 10 days before this MSJ hearing. **Exh. I, p. 7 thru p. 8. 17.**

Respondent submitted a motion to strike the language, which doesn't change the facts about the meeting in the hallway, the Judges Chambers or during the MSJ hearing

because the Pro se did submit the truth. See Plaintiffs 2nd motion for summary judgment Exh. F, 2. where Respondent Attorney Benjamin Davis states there is supposed to be a supplemental request for production. All of the above is proof that discovery was the genuine dispute that began on 7-30-14 in the hallway and evasively continued all the way through the meeting in the hallway on 4-1-15, beyond the MSJ hearing on 4-2-15 and to the Court of Appeals.

Furthermore, the new evidence submitted by the Defendant in their memorandum was to create a genuine dispute, but it actually proved 100% that the Defendant was on the right of way after 6-21-12 and the 2 unburied cable lines belonged to Knology Inc. This genuine proof was intentionally not disclosed to the Pro se along with all of the other production and admissions that would have been revealed relevant evidence from the Judge ordered supplemental request. See App. Initial Brief p. 39., 16. The Defendant actually and improperly changed the question with their response to avoid admitting the truth and the Jason Tant E-mail proved this fact. See App Initial Brief p. 30-31., p. 27., 50., p. 28., 52-54.

The Appellant Court can easily see that the Pro se Appellant did not receive their memorandum Judge Dennis had in his possession, because Defendants memorandum was filed the next day when the MSJ hearing occurred. **Exh B** and stamped at 1:28 on 4-2-15 by the Charleston County Clerks Office and then added to the Public Index. Again the Respondent is trying to confuse the Court of Appeals by making accusations of untruths

about the Pro se Jack Powell to avoid there second intentional evasive responses.

Appellant submits Attorney Davis stated to Judge Dennis he had mailed their memorandum that morning and then Judge Dennis demonstrated Inadvertence and made when he wasn't concerned about the Pro se reading their memorandum before the hearing the next day. Judge Dennis also made a mistake when he thought their memorandum was just the same issues which was an improper and flawed opinion, because the Defendant submitted a new argument with their new photo. Judge Dennis should have also known he was allowing Defendant to still evade answering the originally compelled discovery request, because he said during the hearings he read it and he was supposed to read it. Therefore, Judge Dennis erred when allowing these genuine disputes about the lawful procedures and the actual facts that reveals Knology's actions before & after Mr. Powells injuries. See **Exh. I, Tran p. 11, L. 17 thru p. 12, L. 6, p. 22, L. 3-4, p. 3, L. 9-23, p. 7, L. 4 thru p. 9-10, and Relief of Judgment p. 9, 27., p. 10, 28., p. 12, 31- 34. and p. 26., 48.**

The MSJ hearing was in fact premature and it may be insulting to the Honorable Court of Appeals, that now Respondent is trying use a defense of untruthful statements when Mr. Powell made these statements before the Appeal and were never challenged in this manner. Again, the Defendant never offered any easily obtained proof or statements to prove these hallway and Judge Dennis chambers statements never occurred, because the statements would prove Pro se was truthful, because the Defendants memorandum filed and stamped by the Charleston County Clerk on April 2nd 2015 and stamped as filed

at 1:28 p.m. the same day as the MSJ hearing. Exh. B., But, the cover letter to the Clerks Office (last page) is dated April 1st 2015 Exh. C. Furthermore, how could Judge Dennis accept the statement that the Defendant mailed Pro se their memorandum that morning when he should have known this could deny Pro se a fair and impartial hearing? Judge Dennis made a mistake when he allowed the Defendants MSJ hearing take place. See Appellants Initial Brief p. 13., 16 -17., p. 16., 24-26. p. 28., 52., p. 33., 59 and Conclusion.

Attorney Hiser states; "there is no evidence to substantiate Appellants version of them." Appellant submits this is a convenient statement made by her instead of the Attorney Davis who was present, because he would be in fact submitting an untruth. See Relief of Judgment p. 12, 31-33 & Initial Brief p. 12. 15 & 16. Again all the Defendant and then Respondent had to do is request a statement from Judge Dennis to prove their accusation. Therefore, it's obvious this occurred just like the Pro se stated and the Court of Appeals can easily recognize their intentional tactic taking place during their response to the Appellants relief of judgment. Hiser statement under heading, Third.

Furthermore, since the Respondent submitted their Transcript of the Plaintiffs compelled discovery hearings on 7-30-14 in their Motion to Strike Portions of Appellant's Initial Brief and Attachments and for Sanctions, from when Knology Inc. was compelled for discovery on 7-30-14, you can now see **Attachment A, Tran p. 2, L. 10-22** where both parties and Judge Dennis agreed to a supplemental Production request. Therefore, the Defendants responses weren't deemed sufficient and since the Pro se has

been accused of possible fabrications and untruths, this is another reason Pro se submits his motion for relief of judgment p. 2, 6. & App. **Tran. Exh A, p. 14**, L. 12 thru L. 10 of p. 15 and p. 17., L. 12-20 that proves that Judge Dennis ruled with the exact opposite position about the memorandum during this MSJ case, “no big deal”. Also App. Initial Brief p. 12,15-17.

Also, Respondent requests the Court to strike attachments B, C, D, E. Appellant submits Plaintiffs motion for reconsideration Exh. N & H, 6., p. 10, p. 6, D, p. 5, 6. and Plaintiffs Complaint first paragraph, p. 2, first para. & 4th para., p. 3, para 3 & 4. The Plaintiff submits he has already entered this evidence to the record. Also Exh. F. was submitted to the Appellate Court as new evidence in Pro se’s Initial Brief, because the Jason Tant E-mail wasn’t discovered until after the Order was signed because of the mistakes made by Judge Dennis and the Pro se’s excusable neglect.

Also, Attorney Hiser states the Court of Appeals will not consider evidence not presented to the lower court and the Appellant submits the evidence was submitted to the lower court. The Appellant submits the Respondents Attorney Hiser has also submitted new evidence that the Pro se Appellant has submitted untruths with his altered, suspicious and fabricated e-mail that may not be from an Knology employee. Attorney Hiser knows first E-mail was written by Jason Tant who was the Charlestons Operations Manager from Nov. 2011 thru April 2014. Exh. D, and addressed to Knology’s Marketing Director Kayla Droney. Exh. E. Furthermore on Sept 4th 2012 Mr. Powell sent an E-mail to Jason

Tant telling him that he needed the names to the sub-contractor who left the two lines unburied, which makes it obvious who Jason Tant was and that the Pro se didn't know Tant had already sent his E-mail admitting the unburied cable lines belonged to Knology and if the Pro se would have known this he could have used the E-mail in the place of the supplemental production request #4 that would have included the E-mail. This is why the Defendant never responded properly and without a doubt this MSJ would have been denied on 4-2-15 because the Plaintiff would have already been in possession of the Jason Tant E-mail and there wouldn't be an ongoing genuine dispute about discovery. Therefore their motion for summary judgment was premature. App. Exh. F & see also Appellants Initial Brief beginning with p. 11, 13-17.

This is still an ongoing dispute proven by the Respondents argument in their Strike Portions of Appellants Initial Brief and in their Return in Opposition to Motion For Relief of Judgment. See **Exh. I, Tran p. 7**, L. 4 thru p. 9 and **Attachment A of Tran. p. 5, 25.** thru p. 7, 18. where Judge Dennis wouldn't allow the Plaintiff to prove they had already admitted the lines were theirs and Knology a cable company doesn't have to agree with local laws and whether Judge Dennis & Knology thinks it's hazardous or not is really not that significant. See Plaintiffs 2nd MSJ p. 4, New Evidence No. 4, and Section 30-151 Inspection of Work by City; Access of Officials and p. 7. were genuine disputes of law.

P. 3. para 3. Attorney Hiser states "Appellant admits he had the purported Tant

E-mail in his possession but just” did not discover he had the E-mail until after the Order for Summary Judgment was signed on 4-5-16. The Pro se Appellant had submitted that he had to go to the library to do his work where he was only allowed access to a computer 2 hours a day. Actually, the library had possession and this is one of the reasons the Pro se didn’t realize he had the E-mail because of the time constraints involved.

Furthermore, the Appellant feels the Court of Appeals can easily see this was and still is the main genuine dispute and this is why the Defendant didn’t want the Lower Court to see and hear about this E-mail that should have been discovered in their ordered production request that proved their fault in Mr. Powell’s Complaint.

Attorney Hiser has submitted an untruth when she stated Mr. Powell admits he purported Tant Email in his possession. Again the Pro se didn’t know he had the E-mail, because if he had the case would have already been decided in Jack Powell’s favor during a jury trial. Also the Attorney has used the word purported to improperly to insinuate the Pro se had admitted he had professed he had intentionally done something falsely with the E-mail, which was again another tactic that the Honorable Court of Appeals can easily recognize as a desperate attempt to survive this appeal.

CONCLUSION

Therefore, the Appellant should not be sanctioned for merely pointing out the obvious statements, attitudes and bias towards him by the Lower Court Judge Dennis, Attorney Benjamin Davis and Attorney Helen Hiser who is submitting new evidence and

arguments when speaking for Mr. Davis and insinuating the Pro se is submitting untruths.

Furthermore, Appellant submits again the reason Attorney Hiser is making these complaints is because Mr. Davis doesn't want to be on record of accusing Mr. Powell of fabricating and/or submitting untruths when he was present when the statements were made. The Pro se was insulted and treated with bias by Judge Dennis multiple times during these procedures that included him allowing evasive and improper tactics to conceal discovery, including his ordered supplemental discovery.

Attorney Hiser states Appellant has wrongfully accused Judge Dennis of bias and lodging personal, aggressive insults by Appellant and was bad faith. Appellant submits it is unfortunate the Pro se had to point this out to the Court of Appeals. But the attitudes and documentation do reveal the facts so the Court of Appeals can realize these were improper statements, procedures and bias by Judge Dennis. Attorney Benjamin Davis and now Attorney Hiser also revealed her tactics submitted in this motion towards the Pro se right after she had stated "Abusive language toward the opposing counsel has no place in documents filed with our courts; the filing of a document containing such language is one form of harassment prohibited by Rule 11." **Coats v. Pierre, F.2d 728, 734 (5th Cir. 1989).**

Appellant submits Attorney Hiser was insinuating that the Pro se of was stating untruths about statements made to Judge Dennis and he fabricated statements made by Judge Dennis. She made these statements when she knew Attorney Benjamin Davis was

a witness and she knew the truthful facts before submitting these improper statements and then signing the Response when she knew Mr. Powell had made truthful statements.

Also the Respondent Attorney Helen Hiser had submitted **Coates v Pierre** stating the language was outrageous when the Pro se Attorney stated; “acted like a dumb female Mexican pig in heat” and that she was “nothing but garbage.” Mr. Powell submits he agrees this is abusive language and this attempt by her to compare and insinuate the Pro se’s statements in this case were the same, should an insult to the Court of Appeals and be ignored as a relevant case and should be removed from the record. But, these were obviously unrelated statements and had nothing to do with the circumstances and the facts in this case. The Pro se included language that coincided with the circumstances and with the actual statements & manner exercised during 3 MSJ hearings, in the hallways & during the meeting in Judge Dennis’s chambers.

Therefore the Honorable Court may feel insulted by the Respondent to even consider this addition from another case as a fair and reasonable comparison of the facts to this case when Judge Dennis stated; Relief of Judgment p 17., 43. “now be careful what your saying” and the Pro se was correct with what he had submitted to the Court. Also pp. 18., 45., “you haven’t done that” when the Pro se had. Also same 45., “I’m telling you that your going to file a supplemental request” when the Plaintiff already had and pp. 18., 46. is when Judge Dennis gets rude again with the Pro se Appellant when he tells him to tender his supplemental request to him by stating “right now” and the Pro se

was correct about Judge Dennis's ordered supplemental request. Furthermore see on pp. 32., 58. where Judge Dennis states; "Well I'm sure you don't" and he was incorrect again. See pp. 34., 74. where Judge Dennis rudely states 'no it's not' and he was wrong. Also Judge Dennis interrupted Mr. Powell many times and the Pro se's complaints were reasonable and the description of the case Coates v Pierre is purely inapplicable, because the improper descriptions and statements were coming from Judge Dennis not the Pro se.

The Pro se Appellant has submitted evidence multiple times to demonstrate the bias towards him including in his motion for relief. The Pro se submits it is obvious the granting of summary judgment was improper and premature, because the discovery of the E-mail proved 100% Knology owned the unburied cable lines and it should have already been part of the discovery record. But it wasn't, because of the mistakes made by Judge Dennis during the discovery procedures and the MSJ hearing.

Also Respondent never submitted any statement from the documents they had in their possession, that the Knology Operations Manager Jason Tent was a fabrication and he wasn't associated with Knology in any way. Furthermore, Respondent never did submit any statement from Knology Marketing Director Kayla Droney that Jason Tant wasn't an employee of Knology. The Respondent also stated "Appellant failed to respond in any way to Respondents motion to strike portions of Appellants initial brief and the attachments and for Sanctions ("motions to strike and for sanctions.") Pursuant to Rule 240 (e) his failure to file a return should be deemed a consent by that party to the relief

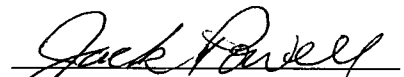
sought in the motion”

Appellant did not submit a response because he felt the Honorable Court of Appeals could easily determine Pro se had submitted sufficient evidence that coincided with his statements and circumstances that proved his complaints against Judge Dennis and Attorney Benjamin Davis’s statements and manner. Furthermore any removal of a statement in this motion does not change the facts, evidence of the case or the genuine disputes that still exist. Therefore, the Pro se was not consenting, but leaving the decision up to the Honorable Court of Appeals.

The Respondent has stated multiple times the “litigant could have discovered the new evidence prior to trial.” And this is the reason the Pro se’s Relief of Judgment should be granted, because the Pro se has proven multiple times he had requested the production of documents that were never submitted to the Pro se even after Judge Dennis ordered a supplemental request. Therefore, because of the mistake by Judge Dennis to allow the production request no. 4 to go unanswered during the MSJ hearing after the Pro se had notified him his supplemental request was supposed to be returned 10 days earlier, he denied the Pro se his right to a fair and impartial hearing. This is another reason the motion to strike should be denied and the Pro se Appellant’s motion for relief be granted.

January 11th, 2017

cc; Deputy Clerk/V. Claire Allen
Attorney Davis/Hiser


Pro se Appellant, Jack Powell
1402 Camp Road Unit 8-A
Charleston S.C. 29412

A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
2013-CP-10-5351

JACK POWELL)
)
VS.)
)
MEDICAL UNIVERSITY OF SOUTH)
CAROLINA)

TRANSCRIPT OF RECORD

JULY 30, 2014
CHARLESTON, SC

B E F O R E:

HONORABLE R.. MARKLEY DENNIS, JR.

RECEIVED

JAN 13 2017

SC Court of Appeals

A P P E A R A N C E S:

JACK POWELL
Appearing Pro Se

JAY JONES, ESQUIRE
Attorney for Defendant Medical
University of South Carolina

Ruth L. Mott, RPR, CRR
Certified Court Reporter

1 THE COURT: The next one, Mr. Powell, is your case also,
2 and it's Powell versus Charleston County EMS. All right.
3 Before I deal with the motions to make more definite and
4 certain, motions to compel, you filed a motion for summary
5 judgment, Mr. Jones.

6 MR. JONES: Not in this case, Your Honor. In the case
7 against MUSC.

8 THE COURT: MUSC, all right.

9 MR. JONES: I have four cases with Mr. Powell against
10 various entities.

11 THE COURT: That's fine.

12 MR. JONES: This one in particular --

13 THE COURT: Motion to make more definite and certain.

14 MR. JONES: Yes, Your Honor. He has a motion to compel
15 against EMS. Much like Mr. Dean didn't respond because he
16 had a motion to dismiss pending, if you look at the
17 complaint, it just says EMS is liable for various causes of
18 action. There's no who, what, where, when or why. There's
19 no factual basis for it. And so based on that, not only can
20 we not respond, but we don't have an obligation to until
21 there's some sort of factual basis on which we can, and so we
22 filed the motion for more definite statement and had not
23 responded. We told Mr. Powell we would gladly respond once
24 an amended complaint with sufficient factual information is
25 filed and we can file our responsive pleading.

1 THE COURT: Okay. Mr. Powell, what's your response to
2 the motion to make more definite and certain?

3 MR. POWELL: Well, Your Honor, if I was given 15 days to
4 do that, I wouldn't have a problem with it; but it says right
5 here in the breach of duty that the EMT defendant did not
6 apply a neck collar and assist me up. That is a specific
7 person. I only mentioned EMS about five or six sentences
8 down.

9 THE COURT: Just one second. I see that.

10 (Brief pause.)

11 THE COURT: All right. I'd agree with Mr. Jones it's
12 not artfully drafted, but I think this is sufficient
13 specificity here that you can answer, and it frames some
14 issues, so I would deny your motion to make more definite and
15 certain.

16 MR. JONES: Can we get clarification on one issue?

17 THE COURT: Sure.

18 MR. JONES: The complaint we received, there's a cover
19 sheet, a summons, I guess, and then it starts on page -- hand
20 numbered page 3, and we weren't sure if there was perhaps
21 maybe a page that was inadvertently not filed or --

22 THE COURT: Mine says Complaint No. 1, 2, 3, and then
23 there's 4 -- I have four pages. You don't have four pages?

24 MR. JONES: We did not receive four pages, Your Honor.

25 THE COURT: You haven't been provided with a copy of the

1 complaint, and that may be why -- because if you start on
2 page 3, I would agree with you. What I have goes forward
3 with what happened -- what allegedly happened that caused
4 them to respond, and that's what you're missing.

5 MR. JONES: Yes, Your Honor.

6 THE COURT: So, Mr. Powell, I'm going to ask you to
7 provide them with a copy of the complaint that you filed.

8 MR. POWELL: Okay.

9 THE COURT: You haven't done that apparently.

10 MR. POWELL: All right.

11 THE COURT: But it's online, Mr. Jones. If you want to
12 download it, it's there.

13 MR. JONES: I will do that, Your Honor.

14 THE COURT: Okay. With respect to his motion -- has he
15 filed a motion against you?

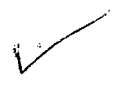
16 MR. JONES: I believe he filed a motion to compel
17 against EMS, yes.

18 THE COURT: All right. What is it you want from EMS,
19 Mr. Powell, specifically?

20 MR. POWELL: Specifically?

21 THE COURT: Yes.

22 MR. POWELL: It's concerning information about their
23 procedures and why they didn't assist me off the ground in a
24 proper amount of time and then gave information to MUSC that
25 was basically untrue. I wanted to find out specifics on



1 that.

2 THE COURT: What is it specifically you want to find
3 out?

4 MR. POWELL: Okay.

5 THE COURT: I mean, have you sent them and said I need
6 to know specifically this, or did you just file a general --

7 MR. POWELL: No, sir, I sent them a copy.

8 THE COURT: What is it you sent them?

9 MR. POWELL: I sent them, on No. 1 it was, admit you
10 arrived, it was dark, and Mr. Powell was lying on the side of
11 the road, face down not moving. And they denied it.

12 THE COURT: All right. That's fine. They've denied
13 that. That's all they're required to do. It's a request to
14 admit which they denied. So that means you have to prove it.
15 What else?

16 MR. POWELL: So that's not considered an evasive answer?

17 THE COURT: No, sir. That's an answer. They deny it.
18 They don't believe that to be the case, that they knew that.

19 Mr. Powell, let me ask you -- let me suggest something
20 else that you do: Your snickering at my rulings is improper
21 decorum.

22 MR. POWELL: I didn't mean it towards you, sir.

23 THE COURT: Well, you need to be careful about your
24 persona in a courtroom, sir.

25 MR. POWELL: Thank you, sir. I'm sorry.

1 THE COURT: I take it seriously. I hope you do.

2 MR. POWELL: Oh, I take it seriously. I mean, I'm
3 just -- I guess that's just a habit I've got of trying to
4 be -- when I do that, I'm really just trying to be nice. I'm
5 not really trying to insult you, sir.

6 THE COURT: I don't take it as an insult. It doesn't
7 offend me in the slightest. It's the position I'm holding
8 that doesn't need that. I'm not offended at all. I'd laugh
9 at you too, so anyway -- I'd laugh with you, excuse me, not
10 at you.

11 Okay. What else?

12 MR. POWELL: Female EMT, you did not know for a fact
13 that Mr. Powell was hearing and understanding these questions
14 properly because he may have had a concussion.

15 THE COURT: What did they do?

16 MR. POWELL: They denied it.

17 THE COURT: Well, how did they know that?

18 MR. POWELL: Well, that's my question is how did they --
19 how did she know.

20 THE COURT: You have to take depositions. That's what
21 lawyers do. You try to find information. You've gotten
22 basically what -- I'm not going to require them to answer any
23 more than what they've done, so if you want to find out more,
24 you take depositions.

25 MR. POWELL: Okay. Yes, sir.

1 THE COURT: Thank you, sir. All right. So that's been
2 resolved. What else do we have pending in this case?

3 MR. JONES: I believe that's it, Your Honor, in that
4 case.

5 THE COURT: So the next case we have is MUSC, and you
6 have a motion for summary judgment in that case.

7 MR. JONES: I do, Your Honor.

8 THE COURT: I'll be happy to hear from you.

9 MR. JONES: Court's indulgence for one moment.

10 THE COURT: Surely. Change hats.

11 MR. JONES: I'll just very briefly pick up where Mr.
12 Dean left off on the previous hearing.

13 THE COURT: Yes, sir.

14 MR. JONES: After Mr. Powell fell on the night of June
15 21st, 2012, he was transported by EMS to MUSC. He was taken
16 to the -- EMS noted he was verbally abusive en route. It was
17 also documented in medical records he was verbally abusive to
18 the staff at MUSC. He was medically examined. He was
19 x-rayed. He was medically cleared. He was given pain
20 medications. In fact, he was going to get a pain shot when
21 they were going to take him to get x-rays -- and this is all
22 from his complaint -- they asked him whether he would rather
23 wait for the pain shot. He said, that's the stupidest
24 question I've ever heard, and he said, yes, I'll wait for the
25 pain shot.

1 He did, received the shot, went and got the x-rays, came
2 back, was medically discharged by the staff at MUSC. When he
3 was discharged he quite simply refused to leave. He said he
4 was in pain, he couldn't move, he couldn't get up off the bed
5 in the ER. The -- not public safety but the hospital staff
6 person came over to try to assist him. He screamed out. He
7 tried to assist him again. He yelled again he was in pain,
8 so they stopped. Public safety was called.

9 At this time Mr. Powell admits in his complaint that he
10 asked them to help him get off the bed. They did. They put
11 him in a wheelchair and took him outside, where again he
12 refused to leave the premises after being medically
13 discharged. He said he could not get out of the wheelchair
14 because he was in too much pain. They told him he had to
15 leave. They offered to take him home, take him somewhere
16 else, take him to Roper Hospital. They offered to take him
17 anywhere he wanted to go. He wouldn't leave.

18 Finally, he said, I can't get up, I'm in too much pain.
19 He asked to be helped out of the wheelchair, which he was,
20 and he was subsequently placed in the back of a police car,
21 taken and arrested for trespass. Mr. Powell was subsequently
22 tried and convicted for the trespass charge, and then he
23 filed the present lawsuit. He's alleged five causes of
24 action against MUSC: Reckless and gross negligence, slander
25 and libel, intentional infliction of emotional distress,

1 false arrest, imprisonment, and assault and battery. I'll
2 just briefly address each cause of action and then --

3 THE COURT: You filed a memorandum.

4 MR. JONES: I did, and I don't want to rehash it.

5 THE COURT: You certainly are entitled to rely on the
6 positions stated fully. I'm incorporating it for purposes of
7 review should that become necessary.

8 MR. JONES: I appreciate that, Your Honor. Very
9 briefly, the negligence and gross negligence, the basis of
10 that is essentially that the medical staff and the staff at
11 MUSC didn't properly discharge him. There were some issues
12 with whether or not he should have been discharged with pain
13 medication pending. Those are all questions of medical
14 negligence. There's been no expert affidavit. There's been
15 no evidence establishing the standard of care or any
16 deviation therefrom. Slander and libel, Mr. Powell alleges
17 that the statements actually by the MUSC staff contained in
18 the medical records are slanderous and libelous for I believe
19 saying that he -- bear with me one moment, that he was
20 verbally abusive and that he was quote, unquote, poorly
21 groomed. However, in his deposition Mr. Powell admitted to
22 all of this. As you know, truth is a complete defense to
23 defamation.

24 Moreover, these statements would be qualifiedly
25 privileged because they're in medical records. They weren't

1 disseminated to anybody. They were only for the purpose of
2 putting down factual documentation of the incidents, nor
3 could they be disseminated to anyone else under HIPAA.
4 Finally, he certainly hasn't demonstrated or offered any
5 evidence to show how, much less if he was damaged by any such
6 slanderous or libelous statements. But I would just point
7 out to the Court that from his deposition:

8 "Question, did you cuss at any of the nurses or
9 technicians or doctors?

10 "Answer, I was cussing at all of them, whoever was part
11 of it. I guess if you're standing there, maybe you would
12 think I was cussing. Maybe the doc thought I was cussing at
13 him, but they were all part of it, so I assume when I say
14 assholes, that includes all the assholes there, all the
15 assholes that allowed these public safety people to start
16 pulling me and yanking me off the bed when I was screaming
17 and hollering in pain, and they allowed it to happen again."

18 That's from Mr. Powell's deposition. He was also asked
19 in his deposition about the statements he made because he's
20 made these allegations that there was in the EMS record that
21 he was verbally abusive. He was questioned about that, and
22 that again, when questioned about the statements to the
23 doctor, he was asked what happened:

24 "Question, did you tell them what happened? Did you
25 tell EMS?

1 "Answer, I don't know. I didn't tell EMS. They asked
2 me at the hospital.

3 "Question, and you told them then?

4 "Answer, yes, I tripped over some type of cable line or
5 something because I remember feeling something catching my
6 foot.

7 "So somebody got this information from you; is that
8 right?

9 "Answer, right.

10 "They didn't just make this up?

11 "No, they didn't. They didn't make it up.

12 It goes on to say: Verbally abusive to EMS and staff;
13 stated, quote, between the dumb asses who moved me up and the
14 dumb asses taking care of me, I don't know who was worse, end
15 quote.

16 He corrected it, said picked me up.

17 Then he said: "Answer, we're talking about EMS, and you
18 know why that's written there, because I'm complaining about
19 them, and I'm glad they wrote that down."

20 Then it says right here, quote, and the dumb asses
21 taking care of me, which I'm referring to the doctors, and I
22 don't know who was worse.

23 "Question, so you were verbally abusive to EMS and
24 staff.

25 "Answer, yes. After they yanked and pulled on me two ✓

1 different times, trying to force me off the bed and I'm
2 screaming and hollering, yes" --

3 THE COURT: Mr. Jones, I've read it. I have it, and I
4 have reviewed it. Thank you, sir.

5 MR. JONES: Bottom line, he also admitted that he was
6 covered in dirt when he arrived and that he appeared poorly
7 kept.

8 Intentional infliction of emotional distress quite
9 simply is prohibited under the Tort Claims Act, this is MUSC,
10 a governmental entity, under 15-78-30(f). Moreover, there's
11 no evidence that the conduct by any of the defendants at MUSC
12 was so extreme and outrageous as to exceed all --

13 THE COURT: The case I mentioned earlier, Luba Lynch, I
14 found -- let that go to the jury, and they reversed that,
15 said it wasn't intentional infliction to incarcerate somebody
16 when they had no reason to for 13 hours, so I understand it's
17 a very, very difficult threshold.

18 - MR. POWELL: Then that segues into false imprisonment.
JONES JP

19 THE COURT: He was convicted.

20 - MR. POWELL: He was convicted, and it's barred by
21 15-78-65. *JONES JP*

22 THE COURT: All right.

23 - MR. POWELL: Which allows for discretion of a
24 governmental employee in the performance or nonperformance of
25 their duties.

1 THE COURT: Okay.

2 MR. JONES: And finally, assault and battery. I won't
3 go into the elements, but quite simply, there's no evidence
4 of a harmful or offensive touching here. Whether there's a
5 sufficient threat made to a victim is a reasonable victim's
6 standard. Here, by his own admission in his complaint, he
7 asked for help. The times he was touched, he asked to be
8 helped up not only from the hospital bed but from the ~~the~~
9 wheelchair, so there was no evidence of a harmful or
10 offensive touching. And the alleged touching is privileged
11 if done in defense of others. This is all in our memo, but
12 he admitted he was verbally abusive to the staff. He
13 admitted that he thought the defendants viewed him as, quote,
14 unquote, a combative wino. He admitted that he ~~refused~~
15 leave the hospital and hospital premises after being
16 medically discharged. So, therefore, the actions by MUSC to
17 remove him were necessary and justified and the reasonable
18 victim should have anticipated that they may be escorted into
19 a police car to be arrested. Thank you.

20 THE COURT: Thank you, sir. All right, sir, Mr. Powell,
21 do you wish to respond?

22 MR. POWELL: Yes, sir.

23 THE COURT: Sure.

24 MR. POWELL: Yes, sir, to begin with, he was correct, I
25 was found guilty in that case. Of course, I was defending

1 myself, but I did win an appeal from Columbia to try that
2 again. And, of course, he had mentioned there's no evidence
3 of offensive touching. I would like to touch on that here in
4 a few minutes. But if I could, I think what they've
5 dismissed does have something to do with discovery that I may
6 or may have not received, but so far at this time they've
7 received all the discovery they wanted from me in this case.
8 They have sent me zero. But I do have some evidence from the
9 first --

10 THE COURT: What is it you think they may have that
11 would help your case?

12 MR. POWELL: Well, that's a good question. I've got
13 some things I'd like to point out right here that I need. I
14 need those answers to questions plus the deposition.

15 THE COURT: What is it that they have that you think
16 would help you? Not what you hope they have. What is it you
17 think they have that would be helpful in your case and make
18 it survive a motion for summary judgment? Did you file any
19 affidavits in response to the motion for summary judgment?

20 MR. POWELL: No, sir.

21 THE COURT: Okay. Well, you have to.

22 MR. POWELL: Okay. I've got everything -- I've got the
23 answers to what you're looking for. I'm just trying to
24 explain, he says right here --

25 THE COURT: I'm trying to explain to you that a

1 procedure for summary judgment is, when they file it, they
2 base it on certain things such as deposition testimony, which
3 he cited, and other matters which have been part of the
4 record and filed to support his motion for summary judgment.
5 When a person is served with that, they're required to file
6 basically a responsive affidavit which contradicts that and
7 creates some issue of fact to warrant dismissing or denying
8 the motion for summary judgment. You haven't filed any, so I
9 don't have anything to review. Your statements are not
10 sufficient.

11 MR. POWELL: I thought I could discuss his statements
12 because he's entered false statements in this Court.

13 THE COURT: I don't know about false statements.

14 MR. POWELL: I can prove it right here. It's his
15 document. It's on the ~~summary judgment~~, Your Honor.

16 THE COURT: That's fine. He doesn't have to -- you
17 don't have to prove it. It speaks for itself. For you to
18 say it's false, that's just your position. I don't have
19 anything that contradicts it by way of affidavit.

20 MR. POWELL: He left out vital information. I made a
21 complaint. He took that complaint and recreated it and took
22 out vital information to try to get the Court to have an
23 inflammatory opinion towards me.

24 THE COURT: Inflammatory opinion has nothing to do with
25 it. First of all, where is your affidavit that is required

1 in a medical negligence case concerning the standard of care?

2 MR. POWELL: I didn't file a medical negligence case.

3 THE COURT: Yes, you did. That's what you filed when
4 you alleged negligence on the performance of a medical --
5 some medical provider. You're asserting a medical negligence
6 case.

7 MR. POWELL: Well, I checked into it, and I couldn't get
8 anybody expert to say they could testify under oath why these
9 officers kept trying to pull me off the bed when I was
10 screaming in pain.

11 THE COURT: Thank you, sir. The medical negligence case
12 is dismissed. The negligence case is dismissed. Let's
13 address the defamation. Where is the dissemination, other
14 than in the reports themselves? Where is that? I don't have
15 any evidence.

16 MR. POWELL: I'm sorry?

17 THE COURT: The defamation. Who have they disclosed
18 these things that you claim to be defamatory? They're
19 contained in records. Where else do you have them? Do you
20 have them being told to anyone outside of the hospital? Do
21 you have any evidence of that?

22 MR. POWELL: No, sir. Just in their documents they were
23 discussing with each other.

24 THE COURT: Thank you, sir. Your motion for summary
25 judgment on the defamation action is granted. Let's see, the

1 other is intentional infliction of emotional distress.

2 MR. JONES: That's one of them, yes, Your Honor.

3 THE COURT: That's granted. There's no basis for that
4 based on all the pleadings that have been filed. What else?

5 MR. JONES: False imprisonment.

6 THE COURT: False imprisonment. You were convicted, and
7 all they have to prove is probable cause. Clearly they had
8 probable cause because it resulted in a trial, so that motion
9 is likewise granted. What other causes of action do you
10 have?

11 MR. JONES: Assault and battery, Your Honor.

12 MR. POWELL: Your Honor, I can't present anything
13 concerning false arrest?

14 THE COURT: I just told you, you didn't file an
15 affidavit. That's the reason I'm doing this. You haven't
16 responded as you're required by law to the summary judgment,
17 so, yes, you're correct, it's matter of law, has nothing to
18 do with you, has nothing to do with you as a person, it deals
19 with the law. I'm ruling on matters of law.

20 MR. POWELL: Yes, sir.

21 THE COURT: As to the assault and battery, that likewise
22 is granted based on those positions stated in your
23 memorandum. Anything else on this one?

24 MR. POWELL: Thank you.

25 THE COURT: Thank you very much. All the other motions

1 are now moot. Now Knology.

2 MR. JONES: Your Honor, we have one more actually.

3 THE COURT: Okay.

4 MR. JONES: I'm sorry. Bear with me. Your Honor, no,
5 there was the Charleston County Detention Center case,
6 CP-10-7125.

7 THE COURT: No. 78. We're going to set this aside for
8 right now, and I'm going to take some of these others that
9 have been waiting, and we'll pick this up at the end. Thank
10 you very much.

11 MR. JONES: Thank you.

12 THE COURT: We'll be with you shortly, Mr. Powell, give
13 you a chance to review those files.

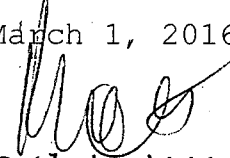
14 MR. POWELL: All right. Thank you.

15 --- END OF TRANSCRIPT OF RECORD ---
16
17
18
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Charleston County,
11 South Carolina, on the 30th of July, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 March 1, 2016
16 
17 Ruth L. Mott

18 Official Court Reporter
19
20
21
22
23
24
25

B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JACK POWELL,)
)
Plaintiff,)
)
vs.)
)
KNOLOGY OF CHARLESTON INC.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2013-CP-10-6019

**MEMORANDUM IN SUPPORT OF
DEFENDANT KNOLOGY'S MOTION
FOR SUMMARY JUDGMENT/
OPPOSITION TO PLAINTIFF'S
SECOND MOTION FOR SUMMARY
JUDGMENT**

FILED
2015 APR -2 PM 1:28
JULIA M. STRONG
CLERK OF COURT

TO: PLAINTIFF JACK POWELL, PRO SE:

Defendant, Knology of Charleston, Inc. ("Defendant"), by and through its undersigned attorneys, hereby submits this Memorandum in Support of its Motion for Summary Judgment, filed March 13, 2015. In support of its motion, Defendant states as follows:

Statement of the Facts

Plaintiff's Complaint alleges causes of action labeled as gross negligence and negligent supervision of employees and subcontractors against Defendant. Plaintiff alleges that he was walking up a right of way beside Folly Road at around 9:00 p.m. on 6-21-12 and tripped on an unburied cable line in the dark. (Compl. ¶ 1.) He alleges he was knocked unconscious and injured his head, neck, shoulder and knee. He alleges the fall occurred at 930 Folly Road in front of the Folly Oaks Center. (Compl. ¶ 3.) Plaintiff alleges that, "After investigating, the two Knology unburied cable lines were exposed for months and running through the front yard of the Folly Oaks Center for about 30 feet in the right of way. They were connected to a telephone pole that was located about one foot from busy Folly Road." (Compl. ¶ 3.)

Plaintiff alleges that Defendant was grossly negligent in failing to breach its duty to

RECEIVED

JAN 13 2017

SC Court of Appeals

Reply To
BENJAMIN B. DAVIS
Direct Dial: (843) 576-2920
bdavis@mgclaw.com

April 1, 2015

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2210

RE: Jack Powell v. Knology of Charleston Inc.
Civil Action No.: 2013-CP-10-6019 (Charleston)
Date of Incident: June 21, 2012
Carrier Claim No.: YVC KL 99682
MGC File No.: 2071.13109

Dear Ms. Armstrong:

Please find enclosed for filing the original and one (1) copy of **Memorandum in Support of Defendant Knology's Motion for Summary Judgment/In Opposition to Plaintiff's Second Motion for Summary Judgment** in the above-captioned case. I would appreciate your returning a clocked-in copy of the same to me in the envelope provided.

By copy of this letter, I am serving counsel of record with the above-referenced **Memorandum in Support of Defendant Knology's Motion for Summary Judgment/In Opposition to Plaintiff's Second Motion for Summary Judgment**.

Thanking you in advance for your assistance, I am

Very truly yours,



Benjamin B. Davis

BBD/src
Enclosures
cc: Jack Powell

RECEIVED

JAN 13 2017

SC Court of Appeals



What is LinkedIn? Join Today Sign In

Jason Tant

Orion Building Services LLC
Greater Atlanta Area | Facilities Services

208
connections

- Current Orion Building Services
- Previous WOW! Internet, Cable & Phone, Knology, Comcast Communications
- Education Comcast Learning & Development

View Jason's full profile. It's free!

Your colleagues, classmates, and 400 million other professionals are on LinkedIn.

[View Jason's Full Profile](#)

Experience

Owner

Orion Building Services
May 2014 – Present (2 years 9 months)

We provide general repair and maintenance services to commercial and retail building owners and property managers.

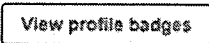
Broadband Network Manager

WOW! Internet, Cable & Phone
September 2012 – April 2014 (1 year 8 months)



Public profile badge

Include this LinkedIn profile on other websites



Operations Manager

Knology
November 2011 – April 2014 (2 years 6 months)



- Responsible for day to day operations of all residential and business service and installation for the Charleston Division as well as all Warehouse operations.

People Also Viewed

Engineering Operations Manager

Comcast Communications
January 2000 – November 2010 (10 years 11 months)

- Responsible for all 58 of the Atlanta Regions hub sites as well as 7 head ends with seventeen head end technicians as direct reports.
- Built the hub department from the ground up, implementing all of the current processes and procedures as well as securing tools and supplies as this was a new department developed by the Regional management team that was previously managed by the local systems individually.
- Organized a region wide node optimization where we optimized the hub to node fiber links on over 4,000 nodes in our region as well as sweeping the first actives off every node with a team of two Headend technicians and about eight Maintenance technicians working nights to prevent any customer impact.
- Worked with the local systems maintenance departments to implement good practices for return troubleshooting to improve our customer's experiences by developing engineering guidelines for proper return signal from the node to the CMTS.
- Involved with testing and implementing many new products, like Pathtrak, Stealth Sweep units, Edge Quams, NSG's, Transmitters, Receivers, combining equipment, and Fiber Nodes to name a few.

RECEIVED

JAN 13 2017

SC Court of Appeals

E

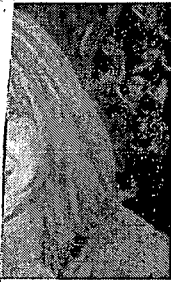
Search for people, jobs, companies, and more...

Advanced



Is Your Company Listed? - List your Furniture Store Online. Enter business address to start now | Read More »

People Similar to Kayla



Kayla Droney

2nd

Corporate Field Marketing Coordinator at WOW!
Internet, Cable & Phone

Charleston, South Carolina Area | Public Relations and Communications

Current WOW! Internet, Cable & Phone
Previous Knology, Charleston Habitat for Humanity, Le Creuset
Education Radford University

Connect Send Kayla InMail

500+ connections

https://www.linkedin.com/in/kayladroney

Contact Info

Background

Summary

Over ten years of experience in:

- Budget Management
- Marketing Strategy
- Internal Communication
- Customer Retention
- Project Management
- Team Leadership/Participation
- Public Relations Management
- Volunteer Recruitment and Retention

Experience

Kayla Droney | LinkedIn

marketing budget variances during monthly P & L calls

- Collaborated with corporate marketing team to increase cross channel and online advertising in competitive areas
- Schedule and lead meetings for retention marketing campaigns that included outlining scope documents, message strategy, action items, assigned responsibility and timing of campaign
- Effectively communicate project details including new products, pricing, rate increase and channel lineup changes to management and front line teams
- Responsible for sales training for front line team members; create local sales contests for technicians and customers service representatives
- Responsible for internal communication; travel 40% between systems
- Managed warehouse re-organization to improve efficiency of procedures in the Charleston system in preparation of digital conversion; outlined timeline, hired temps and led warehouse to complete project on time
- Responsibilities above are in addition to responsibilities as Area Marketing Coordinator for Augusta, GA & Charleston, SC.

Area Marketing Coordinator- Charleston, SC & Augusta, GA

WOW! Internet, Cable & Phone

October 2012 – Present (4 years 4 months)



- Managed the branding of WOW! materials during the transition from Knology to WOW!
- Plan and execute local marketing strategy to achieve budgeted customer growth; track all marketing tactics including cost per call and cost per subscriber
- Manage marketing budget; responsible for explanation of marketing budget during P & L calls
- Maintain stock of marketing collateral
- Deliver messaging of any product, pricing, rate increases, channel changes and sales training; created local sales contest for front line employees
- Responsible for internal communication; travel 25% between systems

F



Jack Powell <carolineschair@gmail.com>

Exposed wire

Jack Powell <carolineschair@gmail.com>
To: Jason Tant <Jason.Tant@knology.com>

Tue, Sep 4, 2012 at 12:08 PM

I'll be needing the name of your sub-contractor who left the lines exposed for months since i will be filing a suit against them also !!! Jack Powell

**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

Case No. 2016-001035

Jack Powell,

Appellant,

v.

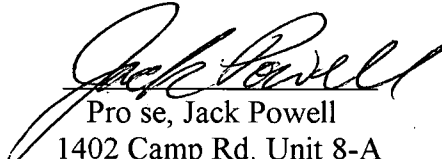
Knology of Charleston Inc.,

Respondent,

PROOF OF SERVICE

I certify that I have served my Response to the Respondents Return in Opposition to Motion for Relief of Judgment for Appeal 2016-001035 and forwarded to Knology of Charleston Inc. attorney of record, Benjamin B. Davis, Esquire of Mcangus, Goudelock & Courie located at 735 Johnnie Dodds Blvd, Ste 200, Mount Pleasant, S.C. 29464 by depositing a copy in the USPS, postage prepaid on 1-11-2017.

1-11-2017


Pro se, Jack Powell
1402 Camp Rd. Unit 8-A
Charleston, South Carolina 29412
(843) 952-4762

CC; V. CLAIRE ALLEN
BENJAMIN B. DAVIS
MCANGUS, GOUDELOCK & COURIE

RECEIVED

JAN 13 2017

SC Court of Appeals

January 11th, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

RE; Jack Powell v Knology of Charleston Inc.
Appellate case no; 2016-001035

RECEIVED

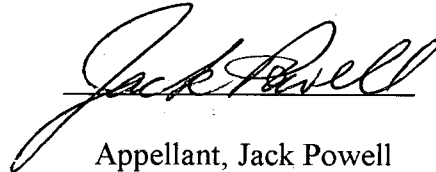
JAN 13 2017

SC Court of Appeals

Dear Ms. Kitchings,

Appellants Motion for Relief of Judgment was filed on 12-19-16 and due to the Christmas and New Year holiday the Respondents Return in Opposition to Motion for Relief of Judgment wasn't posted on the South Carolina Appellate Case Management System until Jan. 3rd 2017. Therefore Pro se has now enclosed his Response to Respondents Return in Opposition to Motion for Relief of Judgment.

Jan. 11th, 2017



Appellant, Jack Powell
1402 Camp Road, Unit 8-A
Charleston, S.C. 29412
(843)952-4762

cc; Deputy Clerk/V. Claire Allen
Attorney/Benjamin Davis