

STATE OF SOUTH CAROLINA  
COUNTY OF DILLON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-17-00335

TAMMY TAYLOR

**RECEIVED**

APRIL SPRINGS, ANGELA BERRY, A B COUNTRY  
KITCHEN A/K/A A&B COUNTRY KITCHEN

MAR 20 2017

PLAINTIFF(S)

DEFENDANT(S)

**SC Court of Appeals**

Submitted by: ALAN L. BERRY, JR.

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNE OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.  
Additional Information for the Clerk :

FILED  
GWEN T. HYATT  
2017 JAN 30 PM 1:58  
CLERK OF COURT  
DILLON COUNTY

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		<i>Angela Berry</i>
		\$ PRK OF COURT
		DILLON COUNTY
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

*Alan L. Berry, Jr.*  
Circuit Court Judge

2754  
Judge Code

1-24-17  
Date



STATE OF SOUTH CAROLINA )  
)  
COUNTY OF DILLON )

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
DOCKET NO.: 2013-CP-17-00335

TAMMY TAYLOR,

Plaintiff,

Vs.

APRIL SPRINGS, ANGELA )  
BERRY, A B COUNTRY )  
KITCHEN A/K/A A&B )  
COUNTRY KITCHEN, )

Defendants. )

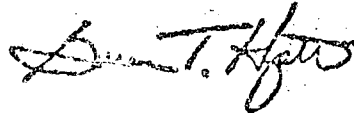
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MAR 20 2017

SC Court of Appeals

ORDER

A CERTIFIED  
TRUE COPY



CLERK OF COURT  
DILLON COUNTY

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2017 JAN 30 PM 1:58  
CLERK OF COURT  
DILLON COUNTY

This matter is before the Court on a Motion to Reconsider filed by the Defendant on June 28, 2016. The Defendant had previously filed a Motion to Dismiss based on the assertion that the Defendant was a not a legal entity and that the underlying suit was a nullity based on the holding in *McCullar v. Estate of Campbell*, 381 S.C. 205 (2009). After hearing the Motion to Dismiss, this Court allowed the Plaintiff to amend the complaint to add the owners of the business within ten days or the Defendant's motion to dismiss would be granted. The Plaintiff amended the complaint within the ten day limit adding Defendants April Springs, Angela Berry and A B Country Kitchen a/k/a A&B Country Kitchen. The Defendant filed a timely Motion to Reconsider this Order based on the following:



1. The Court erred in applying the holding in *McCullar v. Estate of Campbell* that “an action brought against a nonexistent defendant is a nullity.”

2. There was no motion to amend the Plaintiff’s Complaint before the Court. Relief should not have been granted for a matter not properly before the Court.

3. The Amended Complaint is improperly captioned. The Plaintiff failed to follow the emailed instructions of the Court on how to properly caption the Amended Complaint.

After hearing the Motion to Reconsider, it appears that the Court was in error in not dismissing the Plaintiff’s complaint and in allowing the Plaintiff to amend the complaint. The Defendant’s Motion to Dismiss should be granted and this case should be DISMISSED.

In *McCullar v. Estate of Campbell*, the Supreme Court reviewed an order from the Court of Appeals which reversed a circuit court order dismissing a medical malpractice suit brought against the estate of a deceased doctor after the estate had been closed. In considering the decision of the Court of Appeals, the Court stated that what “is at issue here...is not capacity, standing, or party in interest, but something more fundamental: whether, at the time the suit was purportedly commenced, there existed a juridical entity...” *McCullar*, 207. The Supreme Court then reversed the Court of Appeals since the estate in question did not exist at the time of the commencement of the suit and “because an action brought against a nonexistent defendant is a nullity.” *Id.*

This Court finds that the original named Defendant is not a legal entity, and therefore, a nonexistent defendant. Defendant, A B Country Kitchen is not a business entity under the laws of South Carolina, and as such, the owner should be the proper legal entity to be named in a

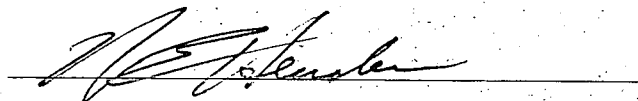


lawsuit. That was not done in this case. The Court further finds that because the Plaintiff did not name a legal entity in her complaint, this case is a nullity and should be DISMISSED and removed from the docket of the Court.

The Court also allowed the Plaintiff to amend her complaint to add new defendants. The case was recaptioned as indicated above. The Defendant was correct to point out that the Plaintiff did not make a motion to amend the complaint and that the Court was in error in allowing it to be amended. The Court finds that the Plaintiff failed to make a motion to amend her complaint and because of this, the Court was without the authority to grant that relief. Furthermore, based on the above analysis under *McCullar*, this case is a nullity and must be treated as if it never existed. Therefore, it cannot be amended. For these reasons, this case as against all Defendants should be DISMISSED.

IT IS THEREFORE ORDERED, that this case is DISMISSED for the reasons outlined above.

IT IS SO ORDERED.



Roger E. Henderson  
Circuit Court Judge  
Fourth Judicial Circuit

Dated: January 24, 2017

Chesterfield, South Carolina