

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )  
H. Wayne Charpia )  
Plaintiff, )  
v. )  
Rene McMasters Ronagham, Frank M. Cisa )  
and Cisa & Dodds, LLP )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL CIRCUIT

CASE NO. 2015-CP-18-01891

ORDER

**RECEIVED**

APR 03 2017

SC Court of Appeals

2017 MAR -2 PM 3:09  
CLERK OF SUPERIOR COURT  
DORCHESTER COUNTY

This matter came before the Court on a Motion to Strike Affidavit of Default and to Dismiss the Case. A hearing on the motion was conducted on February 6, 2017. Present at the hearing were H. Wayne Charpia, pro se, and Frank Cisa, Esquire, attorney for Defendant Rene McMasters, formerly known as Rene McMasters Ronaghan ("Defendant"), Defendant Frank Cisa, and Defendant Cisa & Dodds, LLP.<sup>1</sup> Defendant seeks an order striking the affidavit of default filed by Plaintiff H. Wayne Charpia ("Plaintiff") and to dismiss the case.

**PROCEDURAL HISTORY**

This case arises from a breach of contract claim. Plaintiff filed the Summons and Complaint on September 23, 2015. Plaintiff claims that Defendant was served by certified mail on January 18, 2016 and Defendant failed to file an answer within thirty days of service. Plaintiff thereafter filed an Affidavit of Default on March 3, 2016. On August 22, 2016, Defendant filed the present motion and the Affidavit of Rene McMasters.

**DISCUSSION**

Defendant argues that the Court should strike the affidavit of default and dismiss the case because Plaintiff failed to serve her with the summons and complaint. According to Rule 4, SCRPC, service is proper upon the defendant "by registered or certified mail, return receipt requested and delivery restricted to the addressee." However, service by certified mail "shall not be the basis for entry of a default ... unless the record contains a return receipt showing the acceptance by the defendant." Rule 4(d)(8), SCRPC. The person serving process "shall show in

<sup>1</sup> Defendant Cisa and Defendant Cisa & Dodds, LLP were dismissed from the suit pursuant to an order signed by Judge Hughston on December 21, 2015.

*awp*  
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his proof of service the date and place of mailing, and attach a copy of the return receipt ... showing whether the mailing was accepted, refused, or otherwise returned." Rule 4(g), SCRCF.

Plaintiff's position is that service upon Defendant was proper on three different occasions. First, Plaintiff argues that he attempted to serve Defendant at the office of Keller Williams, a real estate firm with whom Defendant worked, in Asheville, North Carolina on September 25, 2015. However, the documents were returned for insufficient address. Defendant argues that service was improper since the documents were returned to sender. This Court agrees. According to Rule 4(d)(8), SCRCF, "[i]f delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules."

Second, Plaintiff argues that service on Defendant was proper when he mailed the summons and complaint to the Keller Williams office in Fort Mill, South Carolina on January 8, 2016, and the return receipt addressed to Defendant was signed by an employee, Stephanie Neal. Defendant argues that the copy of the return receipt attached to Plaintiff's affidavit of default is not evidence of proper service because the receipt was not signed by Defendant. Additionally, Defendant stated in her affidavit that she does not have any agents located at Keller Williams who are authorized to accept service on her behalf. Thus, service upon Defendant was not proper since Plaintiff failed to provide a return receipt showing acceptance by Defendant as required by Rule 4(d)(8), SCRCF.

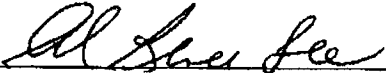
Plaintiff further argues that service of process was sufficient when he also served Defendant's attorney with the summons and complaint as directed by an email from the Clerk of Court dated August 23, 2016. Defendant argues that serving the attorney with the summons and complaint is not proper service and the case should be dismissed because Plaintiff failed to serve Defendant since September 2015. According to Rule 5, SCRCF, an attorney cannot accept service of the summons and complaint since the initial pleading must be served upon the defendant. Plaintiff failed to serve Defendant the original summons and complaint and as a result, "the action may be dismissed by the court on the court's own initiative or upon application of any party." Rule 5(d), SCRCF.

*ad*  
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**ORDER**

For the foregoing reasons, Defendant's Motion to Strike Affidavit of Default and to Dismiss the Case is **GRANTED**.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
ALISON RENEE LEE  
Presiding Judge

February 23, 2017  
Columbia, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015-CP-18-01891

H. Wayne Charpia

Rene McMasters Ronagham, et. al.

2017 MAR -2 PM 3:09

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

CLERK OF COURT  
DORCHESTER COUNTY

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.
- 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, TRIBUNAL, 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

RECEIVED

APR 03 2017

This order  ends  does not end the case.

Additional Information for the Clerk :

SC Court of Appeals

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge

*Al Shu Lea*

Judge Code 2118

Date

2/23/2017

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

Frank Cisa

Pro se

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter