

STATE OF SOUTH CAROLINA)

COUNTY OF *Charleston*)

Tracy Smith)

Plaintiff(s))

vs.)

Save Inc. Sarah Gainey)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015 -CP-10 -6819

Submitted By: *Tracy Smith*
Address: *4351 Park Island Road*
Hollywood, SC 29449

SC Bar #:
Telephone #: *843 709 7346*
Fax #:
Other:
E-mail: *Trace @ OLASPC.com*

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> Contracts
<input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Torts - Personal Injury
<input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Real Property
<input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> General (130) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Foreclosure (420) |
| <input checked="" type="checkbox"/> Breach of Contract (140) | Previous Notice of Intent Case #
20 <u>-NI-</u> | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Fraud/Bad Faith (150) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input checked="" type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Failure to Deliver/
Warranty (160) | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Possession (450) |
| <input type="checkbox"/> Employment Discrim (170) | | <input type="checkbox"/> Assault/Battery (370) | <input type="checkbox"/> Building Code Violation (460) |
| <input type="checkbox"/> Employment (180) | | <input type="checkbox"/> Slander/Libel (380) | <input type="checkbox"/> Other (499) |
| <input type="checkbox"/> Other (199) | | <input type="checkbox"/> Other (399) | |
| <input type="checkbox"/> Inmate Petitions
<input type="checkbox"/> PCR (500) | <input type="checkbox"/> Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800) | <input type="checkbox"/> Judgments/Settlements
<input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Appeals
<input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SCDOT (950) |
| | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured
Settlement Payment Rights
Application (760) | <input type="checkbox"/> Worker's Comp (960) |
| <input type="checkbox"/> Special/Complex /Other
<input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Pharmaceuticals (630) | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Zoning Board (970) |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Unfair Trade Practices (640) | <input type="checkbox"/> Petition for Workers
Compensation Settlement
Approval (780) | <input type="checkbox"/> Public Service Comm. (990) |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Out-of State Depositions (650) | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Employment Security Comm (991) |
| <input type="checkbox"/> Other (699) | <input type="checkbox"/> Motion to Quash Subpoena in
an Out-of-County Action (660) | | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Sexual Predator (510) | <input type="checkbox"/> Pre-Suit Discovery (670) | | |

FILED
2015 DEC 17 PM 3:11
JULIE ARMSTRONG
CLERK OF COURT

Submitting Party Signature: *Tracy Smith*

Date: *12-17-2015*

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Intent to Appeal

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Tracy Smith, Pro Se Plaintiff)
 APPELLANT(S))
)
 VS.)
)
 SAVE, Inc. Sarah Gainey)
 RESPONDENT(S))

CASE NO:2015CP1006819

NOTICE OF CIVIL APPEAL
TO CURE IN 30 DAYS

BY _____
 JULIE J. ARMSTRONG
 CLERK OF COURT
 2016 JUN 23 PM 4:34

FILED

The plaintiff hereby gives notice of appeal from the judgment of the court in the above action, to the as appropriate Court of Appeals in the State of South Carolina.

This notice of appeal is made subsequent to personal notice of the judgment which was received on the 22nd day of June, 2016. The appellant's exceptions to the judgment of are set forth briefly as follows:

- 1) Plaintiff has repeatedly asked Ms. Gainey to release medical treatment records so that I Plaintiff can obtain Expert Affidavit. Ms. Gainey has repeatedly refused and court has failed to order release of said records.
- 2) The Statue requiring expert testimony on which the court relies is not constitutional as applied as it effectively denies Plaintiff his civil right to trial by Jury of his peers.
- 3) There are causes of action having to do with Ms. Gainey's deceptive business practices, have nothing to do with Ms. Gainey's Professional standing, and are easily recognized by Lay People of the Jury without expert testimony.

Tracy Smith

 Tracy Smith, Pro Se Plaintiff

June 23, 2016

SECTION 15-36-100. Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission.

(A) As used in this section, "expert witness" means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who:

(1) is licensed by an appropriate regulatory agency to practice his or her profession in the location in which the expert practices or teaches; and

(2)(a) is board certified by a national or international association or academy which administers written and oral examinations for certification in the area of practice or specialty about which the opinion on the standard of care is offered; or

(b) has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(i) the active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding the opinion;

(ii) the teaching of the area of practice or specialty of his or her profession for at least half of his or her professional time as an employed member of the faculty of an educational institution which is accredited in the teaching of his or her profession for at least three of the last five years immediately preceding the opinion; or

(iii) any combination of the active practice or the teaching of his or her profession in a manner which meets the requirements of subitems (i) and (ii) for at least three of the last five years immediately preceding the opinion;

(3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(2) The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

(D) This section does not extend an applicable period of limitation, except that, if the affidavit is filed within the period specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely and provides no basis for a statute of limitations defense.

(E) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice

requires. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(F) If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(G) This section applies to the following professions:

- (1) architects;
- (2) attorneys at law;
- (3) certified public accountants;
- (4) chiropractors;
- (5) dentists;
- (6) land surveyors;
- (7) medical doctors;
- (8) marriage and family therapists;
- (9) nurses;
- (10) occupational therapists;
- (11) optometrists;
- (12) osteopathic physicians;
- (13) pharmacists;
- (14) physical therapists;
- (15) physicians' assistants;
- (16) professional counselors;
- (17) professional engineers;
- (18) podiatrists;
- (19) psychologists;
- (20) radiological technicians;
- (21) respiratory therapists; and
- (22) veterinarians.

HISTORY: 2005 Act No. 32, Section 4, eff July 1, 2005, for causes of action arising after that date.



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TRACY SMITH
1510 SHARTZ FAIRBANKS RD
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UNITED STATES US

SHIP DATE: 08APR17
ACTWGT: 0.70 LB
CAD: 6897222/55F01801
BILL CREDIT CARD

Part # 152297A589R02079933

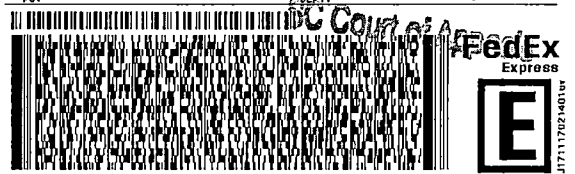
TO ATTN JENNY ABBOTT KITCHINGS CL
SOUTH CAROLINA COURT OF APPEALS
1220 SENATE ST

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COLUMBIA SC 29201

APR 10 2017

(000) 000-0000 REF: DEPT: INU: PG:



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MON - 10 APR 3:00P
STANDARD OVERNIGHT



RT 104
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6 16:00
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